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THE WORKS

OF

ALEXANDER HAMILTON

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THE WORKS

OF

ALEXANDER HAMILTON

EDITED BY

HENRY CABOT LODGE

AUTHOR OF "LIFE AND LETTERS OF GEORGE CABOT," "A SHORT HISTORY OF THE ENGLISH COLONIES IN AMERICA," "ALEXANDER HAMILTON" AND "DANIEL WEBSTER" (IN "AMERICAN STATESMEN" SERIES), AND "STUDIES IN HISTORY"

"The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the hand of the Divinity itself, and can never be erased or obscured by mortal power."

[HAMILTON—*The Farmer Refuted*, 1775, Æt. 18.]

"We are laboring hard to establish in this country principles more and more *national*, and free from all foreign ingredients, so that we may be neither 'Greeks nor Trojans,' but truly Americans."—[HAMILTON TO KING, 1796, Æt. 39.]

VOL. V.

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FOREIGN RELATIONS.

(CONTINUED.)

CAMILLUS.

(CONTINUED.)

(From the *Argus*.)

NO. XIV.

1795.

The sixth article stipulates compensation to British creditors for losses and damages which may have been sustained by them, in consequence of certain legal impediments, which, since the treaty of peace with Great Britain are alleged to have obstructed the recovery of debts bona fide contracted with them before the peace.

To a man who has a due sense of the sacred obligation of a just debt, a proper conception of the pernicious influence of laws which infringe the rights of creditors, upon morals, upon the general security of property, upon public as well as private credit, upon the spirit and principles of good government; who has an adequate idea of the sanctity of the national faith, explicitly pledged—of the ignominy attendant upon a violation of it in so delicate a particular as that of private pecuniary contracts—of the evil tendency of a precedent of this kind to the political and commercial interests of the nation generally—every law which has existed in this country, interfering with the recovery of the debts in question, must have afforded matter of

serious regret and real affliction. To such a man, it must be among the most welcome features of the present treaty, that it stipulates reparation for the injuries which laws of that description may have occasioned to individuals, and that, as far as is now practicable, it wipes away from the national reputation the stain which they have cast upon it. He will regard it as a precious tribute to justice, and as a valuable pledge for the more strict future observance of our public engagements; and he would deplore as an ill-omened symptom of the depravation of public opinion, the success of the attempts which are making to render the article unacceptable to the people of the United States. But of this there can be no danger. The spontaneous sentiments of equity, of a moral and intelligent people, will not fail to sanction, with their approbation, a measure which could not have been resisted without inflicting a new wound upon the honor and character of the country.

Let those men who have manifested by their actions, a willing disregard of their own obligations as debtors —those who secretly hoard, or openly or unblushingly riot on the spoils of plundered creditors, let such men enjoy the exclusive and undivided satisfaction of arraigning and condemning an act of national justice, in which they may read the severest reproach of their iniquitous principles and guilty acquisitions. But let not the people of America tarnish their honor by participating in that condemnation, or by shielding with their favorable opinion, the meretricious apologies which are offered for the measures that produce the necessity of reparation.

The recapitulation of some facts will contribute to a right judgment of this part of the treaty.

It is an established principle of the laws of nations, that, on the return of peace between nations which have been at war, a free and undisturbed course shall be given to the recovery of private debts on both sides.* In conformity to this principle, the 4th article of the treaty of peace between the United States and Great Britain, expressly stipulates, "that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona-fide debts theretofore contracted."

Two instances of the violation of this article have been already noticed, with a view to another point; one relating to certain laws to the State of Virginia, passed prior to the peace, which, for several years after it, appears to have operated to prevent the legal pursuit of their claims by British creditors. Another, relating to a law of the State of South Carolina, which suspended the recovery of the debts for nine months, and after that period permitted the recovery only in four years' instalments.

But these were not all the instances; there were other laws of South Carolina prolonging the instalments, and obliging the creditors to receive in payment the property of debtors at appraised values; and there were laws of Rhode Island, New Jersey, North Carolina, and Georgia, making paper money a legal tender for the debts of those creditors; which, it is known, sustained a very great depreciation in every one of those States. These very serious and compul-

*Grotius, B. III., Ch. XX., S. XVI.

sory interferences with the rights of the creditors, have received from Decius, the soft appellation of a modification of the recovery of British debts. Does he expect to make us believe, by this smooth phrase, that the right to recover the full value of a debt in sterling money, is satisfied by the obligation to take as a substitute, one half, one third, or one fourth of the real value in paper ?

It must necessarily have happened, that British creditors have sustained, from the operation of the different acts alluded to, losses more or less extensive, which the mere removal of the legal impediments which occasioned them could not repair. In many instances, the losses must have actually accrued and taken their full effect; in others, where no proceedings may have been had, the lapse of so many years must have created inabilities to pay, in debtors who were originally competent, who might have been made to pay, had there been a free course of justice.

The removal of the impediments, therefore, by opening of the courts of justice, was not an adequate satisfaction. It could not supersede the obligation of compensation for losses which had irretrievably accrued by the operation of the legal impediments, while they continued in force. The claim for this was still open on the part of Great Britain, and still to be adjusted between the two nations.

The excuse that these laws were retaliations for prior infractions of treaty by Great Britain, was in no view an answer to the claim.*

*It may not be improper to observe, that this excuse implies a palpable violation of the then Constitution of the United States. The confederation vested the powers of war and of the treaty in the Union. It therefore lay ex-

In the first place, as has already been proved, the fact of such prior infractions was too doubtful to be finally insisted upon, and was, after a fruitless effort to obtain the acquiescence of the other party, properly and necessarily waived; so that it could not serve as a plea against reparation.

In the second place, if that fact had been indubitable, the species of retaliation was unwarrantable. It will be shown, when we come to discuss the 10th article, that the debts of private individuals are in no case proper objects of reprisals; that independent of the treaty, the meddling with them was a violation of the public faith and integrity; and that, consequently, it was due as much to our own public faith and integrity as to the individuals who had suffered, to make reparation. It was an act demanded by the justice, probity, and magnanimity of the nation.

In the third place, it was essential to reciprocity in the adjustment of the disputes which had existed concerning the treaty of peace. When we claimed the reinstatement and execution of the article with regard to the posts, it was just that we should consent to the reinstatement and execution of the article with regard to debts. If the obstruction of the recovery of debts was the equivalent by way of retaliation for the detention of the posts, we could not expect to have restitution of the thing withheld and to retain the equivalent

clusively with Congress to pronounce whether the treaty was or was not violated by Great Britain, and what should be the satisfaction. No State, individually, had the least right to meddle with the question, and the having done it was an usurpation on the constitutional authority of the United States.

It might be shown, on a similar principle, that all confiscations or sequestrations of *British debts*, by particular States, during the war, were also unconstitutional.

for it likewise. The dilemma was to be content with the equivalent and abandon the thing, or to recover the thing and abandon the equivalent; to have both was more than we could rightly pretend. The reinstatement of the article, with regard to the debts, necessarily included two things: the removal of legal impediments as to the future recovery; compensation for past losses by reason of those impediments. The first had been effected by the new Constitution of the United States; the last is promised by the treaty.

Did our envoy reply that the reinstatement of the article with regard to the posts included likewise compensation for their detention? Was it an answer to this, destitute of reason, that our loss, by the detention of the posts, which resolved itself essentially into the uncertain profits of a trade that might have been carried on, admitted of no satisfactory rule of computation; while the principal and interest of private debts afforded a familiar standard for the computation of losses upon them; that, nevertheless, while this was the usual, and must be the admitted standard, it is an adequate one in cases where payment is protracted beyond the allowed term of credit—since the mere interest of money does not countervail among merchants, the profits of its employment in trade, and still less the derangements of credit and fortune, which frequently result to creditors, from procrastinations of payment—and that the final damage to Great Britain, in these two particulars, for which no provision could be made, might well exceed any losses to us by the detention of the posts?

In the last place, the compensation stipulated was a

sine qua non with Great Britain, of the surrender of the posts, and the adjustment of the controversy which had subsisted between the two countries. The making it such may be conceived to have been dictated more by the importance of the precedent, than by the quantum of the sum in question. We shall easily understand this, if we consider how much the commercial capital of Great Britain is spread over the world. The vast credits she is in the habit of extending to foreign countries, renders it to her an essential point to protect those credits by all the sanctions in her power. She cannot forbear to contend at every hazard against precedents of the invasion of the rights of her merchants, and for retribution where any happen. Hence, it is always to be expected, that she will be peculiarly inflexible on this point; and that nothing short of extreme necessity can bring her to relax in an article of policy, which perhaps not less than any other, is a necessary prop of the whole system of her political economy.

It was, therefore, to have been foreseen that whenever our controversy with Great Britain was adjusted, compensation for obstructions to the recovery of debts would make a part of the adjustment. The option lay between compensation, relinquishment of the posts, or war. Our envoy is entitled to the applause of all good men, for preferring the first. The extent of the compensation can, on no possible scale, compare with the immense permanent value of the posts, or with the expenses of war. The sphere of the interferences has been too partial to make the sum of the compensation, in any event, a very serious object; and as to a war, a

conscientious or virtuous mind could never endure the thoughts of seeing the country involved in its calamities, to get rid of an act of justice to individuals, whose rights, in contempt of public faith, had been violated.

Having reviewed the general considerations which justify the stipulation of compensation, it will be proper to examine if the plan upon which it is to be made, is unexceptionable.

This plan contains the following features: 1. The cases provided for are those "where losses and damages occasioned by the operation of lawful impediments (which since the peace have delayed the full recovery of British debts, *bona fide contracted before the peace, and still owing to the creditors*, and have impaired and lessened the value and security thereof) *cannot now, for whatever reason, be actually obtained in the ordinary course of justice.*" 2. There is an express exception out of this provision, *of all the cases* in which losses and damages have been occasioned *by such insolvency of the debtors, or other causes, as would equally have operated to produce them, if no legal impediment had existed, or by the manifest delay, or negligence, or wilful omission, of the claimants.* 3. The amount of the losses and damages, for which compensation is to be made, is to be ascertained by five commissioners to be appointed as follows: two by his Britannic Majesty, two by the President with the advice and consent of the Senate, the fifth by the unanimous voice of these four, if they can agree; if they cannot agree, then to be taken by lot out of two persons, one of whom to be named by the two British commissioners, the other by the two American commissioners. 4. These five commis-

sioners, thus appointed, are, before they proceed to the execution of their trust, to take an oath for its faithful discharge. Three of them to constitute a board; but there must be present one of the two commissioners named on each side, and the fifth commissioner. Decisions to be made by majority of voices of those present. They are first to meet at Philadelphia, but may adjourn from place to place as they see cause. 5. Eighteen months after the commissioners make a board, are assigned for receiving applications; but the commissioners, in particular cases, may extend the term for any other term, not exceeding six months. 6. The commissioners are empowered to take into consideration all claims, whether of principal or interest, or balances of principal or interest, and to determine them according to the merits and circumstances thereof, and as justice and equity shall appear to them to require; to examine persons on oath or affirmation, and to receive in evidence, depositions, books, papers, or copies, or extracts thereof, either according to the legal forms existing in the two countries, or according to a mode to be devised by them. 7. Their award is to be conclusive; and the United States are to cause the sum awarded in each case to be paid in specie to the creditor without deduction, and at such time and place as shall have been awarded; but no payment to be required sooner than twelve months from the day of the exchange of the ratifications of the treaty.

This provision for ascertaining the compensation to be made, while it is ample, is also well guarded.

It is confined to debts contracted before the peace, and still owing to the creditors. It embraces only the

cases of loss or damage in consequence of legal impediments to the recovery of those debts which will exclude all cases of voluntary compromise, and can include none, where the laws have allotted a free course to justice. It can operate in no instance where, at present, *the ordinary course of justice* is competent to full relief, and the debtor is solvent; nor in anywhere insolvency or other cause would have operated to produce the loss or damage if no legal impediment had existed, or where it had been occasioned by the wilful delay, negligence, or omission of the creditor.

If it be said that the commissioners have nevertheless much latitude of discretion, and that in the exercise of it they may transgress the limits intended, the answer is that the United States, though bound to perform what they have stipulated with good faith, would not be bound to submit to a manifest abuse of authority by the commissioners. Should they palpably exceed their commission, or abuse their trust, the United States may justifiably, though at their peril, refuse compliance. For example, if they should undertake to award upon a debt contracted since the peace, there could be no doubt that their award would be a nullity. So likewise there may be other plain cases of misconduct, which, in honor and conscience, would exonerate the United States from performance. It is only incumbent upon them to act, bona fide, and as they act at their peril, to examine well the soundness of the ground on which they proceed.

With regard to the reference to commissioners to settle the quantum of the compensation to be made, this course was dictated by the nature of the case.

The tribunals of neither country were competent to retrospective adjustment of losses and damages, in many cases which might require it. It is for this very reason of the incompetency of the ordinary tribunals to do complete justice, that a special stipulation of compensation, and a special mode of obtaining it, became necessary. In constructing a tribunal to liquidate the quantum of reparation, in the case of a breach of treaty, it was natural and just to devise one likely to be more certainly impartial than the established courts of either party. Without impeaching the integrity of those courts, it was morally impossible that they should not feel a bias towards the nation to which they belonged, and for that very reason they were unfit arbitrators. In the case of the spoliations of our property, we should undoubtedly have been unwilling to leave the adjustment in the last resort to the British courts; and by parity of reason, they could not be expected to refer the liquidation of compensation in the case of the debts to our courts. To have pressed this would have been to weaken our argument for a different course in regard to the spoliations. We should have been puzzled to find a substantial principle of discrimination.

If a special and extraordinary tribunal was to be constituted, it was impracticable to contrive a more fair and equitable plan for it than that which has been adopted. The remarks on the mode of determining the question respecting the river St. Croix, apply in full force here, and would render a particular comment superfluous.

To the objection of the Charleston committee, that

the article erects a tribunal unknown to our Constitution, and transfers to commissioners the cognizance of matters appertaining to American courts and juries, the answer is simple and conclusive. The tribunals established by the Constitution do not contemplate a case between nation and nation arising upon a breach of treaty, and are inadequate to the cognizance of it. Could either of them hold plea of a suit of Great Britain plaintiff, against the United States, defendant? The case, therefore, required the erection or constitution of a new tribunal; and it was most likely to promote equity to pass by the courts of both the parties.

The same principle contradicts the position that there has been any transfer of jurisdiction from American courts and juries to commissioners. It is a question not between individual and individual, or between our Government and individuals, but between our Government and the British Government; of course, one in which our courts and juries have no jurisdiction. There was a necessity for an extraordinary tribunal to supply the defect of ordinary jurisdiction; and so far is the article from making the transfer imputed to it, that it expressly excepts the cases in which effectual relief can be obtained in the ordinary course of justice.

Nations acknowledging no common judge on earth, when they are willing to submit the question between them to a judicial decision, must of necessity constitute a special tribunal for the purpose. The mode by commissioners, as being the most unexceptionable, has been repeatedly adopted.

I proceed to reply to some other objections which have been made against the provision contained in this article.

It is charged with affixing a stigma on the national character, by providing reparation for an infraction, which, if it ever did exist, has been done away, there being now a free course to the recovery of British debts in the courts of the United States.

An answer to this objection has been anticipated by some observations heretofore made. The giving a free course to justice in favor of British creditors, which has been effected by the new Constitution of the United States, though it obviates the future operation of legal impediment, does not retrospectively repair the losses and damages which may have resulted from their past operation. In this respect, the effects continued, and reparation was due. To promise it, could fix no stigma on our national character. That was done by the acts which created the cause for reparation. To make it, was as far as possible to remove the stigma.

It has been said that the promise of compensation produces injustice to those States which interposed no legal impediments to the recovery of debts, by saddling them with a part of the burden arising from the delinquencies of the transgressing States. But the burden was before assumed by the treaty of peace. The article of that treaty, which engaged that there should be no lawful impediments to the recovery of debts, was a guaranty by the United States of justice to the British creditors. It charged them with the duty of taking care that there was no legal obstacle to the recovery of the debts of those creditors, and consequently with a responsibility for any such obstacle which should happen, and with the obligation of making

reparation for it. We must, therefore, refer to the treaty of peace, not to the last treaty, the common charge which has been incurred by interference in the recovery of British debts. The latter only carries into execution the promise made by the former. It may be added that it is a condition of the social compact that the nation at large shall make retribution to foreign nations for injuries done to them by its members.

It has been observed, that Mr. Jefferson has clearly shown, that interest in cases like that of British debts, is liable, during the period of the war, to equitable abatements and deductions; and that, therefore, the discretion given to the commissioners on this head ought not to have been as large as it appears in the article.

Mr. Jefferson has no doubt offered arguments of real weight to establish the position that juries have, and exercise, a degree of discretion in any article of interest; and that the circumstances of our war with Great Britain afford strong reasons for abatements of interest. But it was foreign to his purpose, and accordingly he has not attempted to particularize the rules which ought to govern in the application of this principle to the variety of cases in which the question may arise; and he has himself noted that the practice in different States and in different courts, has been attended with great diversity. Indeed, admitting the right to abate interest under special circumstances, in cases in which it is the general rule to allow it, the circumstances of each case, are, perhaps, the only true criterion of the propriety of an exception. The particular nature of the contract, the circumstances

under which it was entered into, the relative situation of parties, the possibility or not of mutual access,—these and other things would guide and vary the exercise of the discretion to abate. It was, therefore, right to leave the commissioners, as they are left, in the same situation with judges and juries :—to act according to the true equity of the several cases or of the several classes of cases.

Let it be remembered that the Government of Great Britain has to consult the interests and opinions of its citizens, as well as the Government of the United States those of their citizens. The only satisfactory course which the former could pursue, in reference to its merchants, was to turn over the whole question of interest as well as principal to the commissioners. And as this was truly equitable, the Government of the United States could make no well-founded opposition to it.

CAMILLUS.

NO. XV.

1795.

It is the business of the seventh article of the treaty, to provide for two objects : one, compensation to our citizens for injuries to their property, by irregular, or illegal captures, or condemnations ; the other, compensation to British citizens for captures of their property within the limits and jurisdiction of the United States, or elsewhere, by vessels originally armed in our ports, *in the cases in which the captured property having come within our posts and power, there was a neglect to make restitution.*

The first object is thus provided for: 1. It is agreed, that in all cases of irregular or illegal captures or condemnations of the vessels and other property of citizens of the United States, under color of authority or commissions from his Britannic Majesty, in which adequate compensation for the losses and damages sustained, cannot, for whatever reason, be actually obtained in the ordinary course of justice, full and complete compensation for the same will be made by the British Government to the claimants—except where the loss or damage may have been occasioned by the manifest delay or negligence, or wilful omission of those claimants. 2. The amount of the losses and damages to be compensated, is to be ascertained by five commissioners, who are to be appointed in exactly the same manner as those for liquidating the compensation to British creditors. 3. These commissioners are to take a similar oath, and to exercise similar powers for the investigation of claims with those other commissioners; and they are to decide according to the merits of the several cases, and to justice, equity, and the laws of nations. 4. The same term of eighteen months is allowed for the reception of claims, with a like discretion to extend the term, as in the case of British debts. 5. The award of these commissioners, or of three of them, under the like guards as in that case, is to be final and conclusive, both as to the justice of the claims and to the amount of the compensation. And, lastly, his Britannic Majesty is to cause the compensation awarded to be paid to the claimants in specie, without deduction, at such times and places, and upon the condition of such releases or assignments, as the commissioners shall prescribe.

Mutually and dispassionately examined, it is impossible not to be convinced, that this provision is ample, and ought to be satisfactory. The course of the discussion will exhibit various proofs of the disingenuousness of the clamors against it; but it will be pertinent to introduce here one or two samples of it.

It has been alleged, that while the article preceding, and this article, provide effectually for every demand of Great Britain against the United States, the provision for this important and urgent claim of ours is neither explicit nor efficient, nor co-extensive with the object, nor bears any proportion to the *summary method* adopted for the satisfying of British claims.

This suggestion is every way unfortunate. The plan for satisfying our claim, except as to the description of the subject which varies with it, is an exact copy of that for making compensation to British creditors. Whoever will take the pains to compare, will find, that in the leading points, literal conformity is studied; and that in others, the provisions are assimilated by direct references; and will discover also this important distinction in favor of the efficiency and summariness of the provision for our claim—that while the commissioners are expressly restricted from awarding payment to British creditors, to be made sooner than one year after the exchange of ratifications of the treaty, they are free to award it to be made the very day of their decision, for the spoliations of our property. As to compensation for British property, captured within our limits, or by vessels originally armed within our ports and not restored, which is the only other British claim that has been provided for, it happens that this, forming a part

of the very article we are considering, is submitted to the identical mode of relief which is instituted for making satisfaction to us.

So far, then, is it from being true, that a comparison of the modes of redress provided by the treaty, for the complaints of the respective parties, turns to our disadvantage, that the real state of the case exhibits a substantial similitude, with only one material difference, and that in our favor; and, that a strong argument for the equity of the provisions on each side, is to be drawn from their close resemblance to each other.

The other objection alluded to, and which has been shamelessly reiterated, is that Denmark and Sweden, by pursuing a more spirited conduct, had obtained better terms than the United States. It is even pretended, that one or both of them had actually received from Great Britain a gross sum on account—in anticipation of an ultimate liquidation. In my second number, the erroneousness of the supposition that those Powers had obtained more than the United States, was intimated; but the subsequent repetition of the idea, more covertly in print, and very openly and confidently in conversation, renders expedient an explicit and peremptory denial of the fact. There never has appeared a particle of evidence to support it; and after challenging the assertors of it to produce their proof, I aver, that careful inquiry at sources of information at least as direct and authentic as theirs, has satisfied me that the suggestion is wholly unfounded, and that at the time of the conclusion of our treaty with Great Britain, both Denmark and Sweden were behind us in the effect of their measures for obtaining reparation.

What are we to think of attempts like these, to dupe and irritate the public mind? Will any prudent citizen still consent to follow such blind or such treacherous guides?

Let us now, under the influence of a calm and candid temper, without which truth eludes our researches, by a close scrutiny of the provision, satisfy ourselves, whether it be not really a reasonable and proper one. But previous to this it is requisite to advert to a collateral measure, which was also a fruit of the mission to Great Britain, and which ought to be taken in conjunction with the stipulations of this article. I refer to the order of the British king in council, of the 6th of August, 1794, by which order the door, before shut by lapse of time, is opened to appeals from the British West India courts of admiralty, to be brought at any time which shall be judged reasonable by the lords commissioners of appeals in prize cases. This, of itself, was no inconsiderable step towards the redress of our grievances; and it may be hoped, that with the aid which the Government of the United States has given to facilitate appeals, much relief may ensue from this measure. It will not be wonderful, if it should comport with the pride and policy of the British Government, by promoting justice in their courts, to leave as little as possible to be done by the commissioners.

I proceed now to examine the characteristics of the supplementary provision made by the article, in connection with the objections to it.

1st. It admits fully and explicitly the principle, that compensation is to be made for the losses

and damages sustained by our citizens, by irregular or illegal captures, or condemnations of their vessels and other property, under color of authority (which includes governmental orders and instructions) or of commissions of his Britannic Majesty. It is to be observed, that the causes of the losses and damages are mentioned in the disjunctive, "captures or condemnations"; so that damages by captures, which were not followed by condemnations, are provided for as well as those where condemnations did follow.

A cavil has been raised on the meaning of the word color, which, it is pretended, would not reach the cases designed to be embraced; because the spoliations complained of were made, not merely by *color*, but actually by *virtue* of instructions from the British Government.

For the very reason that this subtle and artificial meaning ascribed to the term, would tend to defeat the manifest general intent of the main provision of the article—which is plainly to give reparation for irregular or illegal captures or condemnations of American property, contrary to the laws of nations—that meaning must be deemed inadmissible.

But in fact, the expression is the most accurate that could have been used to signify the real intent of the article. When we say a thing was done by color of an authority or commission, we mean one of three things: that it was done on the pretence of a *sufficient* authority or commission *not validly* imparted, or on the pretence of *such* an authority or commission *validly* imparted but *abused* or *misapplied*, or on the pretence of an *insufficient* authority or commission, regularly, as to form,

imparted and exercised. It denotes a defect of rightful and just authority, whether emanating from a wrong source, or improperly from a right source; whereas the phrase "by virtue of," is most properly applied to the valid exercise of a valid authority. But the two phrases are not unfrequently used as synonymous. Thus, in a proclamation of a British king, of the 25th of May, 1792, he, among other things, forbids all his subjects, by *virtue* or under *color* of any foreign commission or letters of reprisals, to disturb, infest, or damage the subjects of France.

In whose mouths does the article put the expression? In those of citizens of the United States. What must they be presumed to have meant? Clearly this: that by color of instructions or commissions of his Britannic Majesty, either exercised erroneously, or issued erroneously, as being contrary to the laws of nations, the citizens of the United States had suffered loss and damage by irregular or illegal captures or condemnations of their property. What is the standard appealed to, to decide the irregularity or illegality to be redressed? Expressly the laws of nations. The commissioners are to decide "according to the merits of the several cases, to justice, equity, and the *laws of nations*." Wherever these laws, as received and practised among nations, pronounce a capture or condemnation of neutral property to have been irregular or illegal, though by color of an authority or commission of his Britannic Majesty, it would be the duty of the commissioners to award compensation.

The criticism, however, fails on its own principle, when tested by the fact. The great source of grievance,

intended to be redressed by the article, proceeded from the instruction of the 6th of November, 1793. That instruction directs the commanders of ships of war and privateers to stop and detain all ships laden with goods, the produce of any colony belonging to France, or carrying provisions and other supplies for the use of such colony, and to bring the same, with their cargoes, to *legal adjudication* in the British courts of admiralty. These terms, "*legal adjudication*," were certainly not equivalent, upon any rational construction, to *condemnation.* Adjudication means simply, a judicial decision, which might be either to acquit or condemn. Yet the British West India courts of admiralty appear to have generally acted upon the term as synonymous with condemnation. In doing this, they may be truly said, even in the sense of the objection, to have acted by color, only, of the instruction.

The British Cabinet have disavowed this construction of the West Indian courts, and have, as we have seen, by a special act of interference, opened a door which was before shut to a reversal of their sentences, by appeal to the courts in England. We find, also, that the term adjudication is used in the seventeenth article of our late treaty as synonymous only with judicial decision, according to its true import. This, if any thing were wanting, would render it impossible for the commissioners to refuse redress on the ground of the condemnations, if otherwise illegal, being warranted by the pretended sense of the words legal adjudication. But in reality, as before observed, their commission will be to award compensation in all cases in which they are of opinion that, according to the established

laws of nations, captures or condemnations were irregular or illegal, however otherwise authorized; and this in contempt of the quibbling criticism which has been so cunningly devised.

2d. The provision under consideration obliges the British Government, in all cases of illegal capture or condemnation in which adequate compensation cannot, for whatever reason, be actually had in the ordinary course of justice, to make full and complete compensation to the claimants, which is to be paid in specie to themselves, without deduction, at such times and places as shall be awarded.

They are not sent for redress to the captors, or obliged to take any circuitous course for their payment, but are to receive it immediately from the treasury of Great Britain.

3d. The amount of the compensation in each case is to be fixed by five commissioners,—two appointed by the United States, two by Great Britain; the fifth by these four, or in case of disagreement, by lot. These commissioners to meet and act in London.

It seems impossible, as has been observed and shown in the analogous cases, to imagine a plan for organizing a tribunal more completely equitable and impartial than this; while it is the exact counterpart of the one which is to decide on the claims of British creditors. Could it have been believed that so palpable an error could have been imposed on a town meeting, in the face of so plain a provision, as to induce it to charge against this article, that in a national concern of the United States, redress was left to British courts of admiralty? Yet, strange as it may appear, this did

happen even in the truly enlightened town of Boston. The just pride of that town will not quickly forget that it has been so compromitted.

The truth is, that, according to the common usage of nations, the courts of admiralty of the belligerent parties are the channels through which the redress of injuries to neutrals is sought. But Great Britain has been brought to agree to refer all the cases in which justice cannot be obtained through those channels to an extraordinary tribunal; in other words, to arbitrators mutually appointed.

It is here that we find the reparation of the national wrong which we had suffered. In admitting the principle of compensation by the government itself, in agreeing to an extraordinary tribunal, in the constitution of which the parties have an equal voice, to liquidate that compensation, Great Britain has virtually and effectually acknowledged the injury which has been done to our neutral rights, and has consented to make satisfaction for it. This was an apology in fact, whatever it may be in form.

As regards our honor, this is an adequate, and the only species usual in similar cases between nations; pecuniary compensation is the true reparation in such cases—governments are not apt to go upon their knees to ask pardon of other governments—Great Britain, in the recent instance of the dispute with Spain about Nootka Sound, was glad to accept of a like reparation. It merits remark, incidentally, that the instrument, which settles this dispute, expressly waives, like our treaty, reference to the merits of the complaints and pretensions of the respective parties. Is

our situation such as to authorize us to pretend to impose humiliating conditions on other nations?

It is necessary to distinguish between injuries and insults, which we are too apt to confound. The seizures and spoliations of our property fall most truly under the former head. The acts which produce them, embraced all the neutral Powers, were not particularly levelled at us, bore no mark of an intention to humble us by any peculiar indignity or outrage.

These acts were of June 8th, and of November 6th, 1793. The seizure of our vessels going with provisions to the dominions of France, under the first, was put on the double ground of a war extraordinary in its principle,* and of a construction of the laws of nations, which, it was said, permitted that seizure; a construction not destitute of color, and apparently supported by the authority of Vatel, though, in my opinion, ill founded. It was accomplished also by compensation for what was taken, and other circumstances, that evinced a desire to smooth the act. The indiscriminate confiscation of our property, upon the order of the 6th of November, which was the truly flagrant injury, was certainly unwarranted by that order (and no secret one has appeared), and the matter has been so explained by the British Government. It is clear that evils suffered under acts so circumstanced, are injuries rather than insults, and are so much the more manageable as to the species and measures of redress. It would be Quixotism to assert that we might not

* Though this country has viewed the principle of the war favorably, it is certain that Europe generally, the neutral Powers not wholly excepted, has viewed it in a different light, so that this was not a mere pretence.

honorably accept in such a case, the pecuniary reparation which has been stipulated.

But it is alleged, in point of interest, it is unsatisfactory—tedious in the process, uncertain in the event—that there ought to have been actual and immediate indemnifications, or at least, a payment upon account.

A little calm reflection will convince us that neither of the two last things was to be expected. There was absolutely no criterion, either for a full indemnification or for an advance upon account. The value of the property seized and condemned (lay out of the case damages upon captures where condemnation had not ensued) was not ascertained, even to our own government, with any tolerable accuracy. Every well-informed man will think it probable, that of this, a proportion was covered French property. There were, therefore, no adequate data, upon which our government could demand, or the British Government pay, a determined sum. Both governments must have acted essentially by guess. Ours could not in honor or conscience have made even an estimate but upon evidence. It might have happened, that a sum which appeared upon the evidence that had been collected, sufficient, might have proved on further evidence insufficient. Too little, as well as too much, might have been demanded and paid. But it will perhaps be said, that some gross estimate might have been formed; and that of this, such a part might have been advanced upon account, as was within the narrowest probable limit, liable to eventual adjustment. Let us for a moment suppose this done—what good end would it have answered? How could the United States have

distributed this money among the sufferers, till it was ascertained which of them was truly entitled, and to how much? Is it not evident, that if they had made any distribution, before the final and perfect investigation of the right of each claimant, it would be at the risk of making mispayments, and of being obliged to replace the sums mispaid, perhaps at a loss to the United States, for the benefit of those who should be found to be better entitled? Would it have been expedient for our government to have incurred this risk to its constituents? And if the money was to be held undistributed till an investigation of claims was completed, to what purpose the haste about an advance?

On the other hand, is it in this loose, gross way, that nations transact affairs with each other? Do even individuals make indemifications to one another, in so lumping a manner? Could it be expected of Great Britain, that she would pay, till it was fairly ascertained what was to be paid; especially when she had too much cause to suspect, that a material proportion of the property claimed, might turn out to be French? Would it have been justifiable on our part, to make her compliance with such a demand, the *sine qua non* of accommodation and peace? Whoever will believe that she would have complied with so humiliating a requisition, must be persuaded that we were in a condition to dictate, and she in a condition to be obliged to receive any terms that we might think fit to prescribe! The person who can believe this, must be, in my opinion, under the influence of a delirium, for which there is no cure in the resources of reason and argument.

It must be admitted, that it was a matter of necessity, that investigation should precede payment; then I see not what more summary mode could have been devised. Who more capable of proceeding with dispatch, than arbitrators untrammelled with legal forms; vested with powers to examine parties and others, on oath, and to command and receive all evidence in their own way? Here are all the means of expedition divested of every clog.

Eighteen months are allowed for preferring claims, but the commissioners are at liberty to adjust them as fast as they are preferred. In every case in which it appears to them bona fide, that the ordinary course of justice is inadequate to relief, they may forthwith proceed to examine and decide. There is no impediment, no cause of delay whatever, more than the nature of a due investigation always requires.

The meeting of the commissioners at London, was recommended by the circumstance that the admiralty courts were likely to concentre there a considerable part of the evidence on which they were to proceed; which, upon the whole, might favor dispatch as well as more complete justice. In many cases the decisions of those courts may come under their review.

As to the uncertainty of the event, this, as far as it may be true, was inseparable from any plan, bottomed on the idea of a previous investigation of claims; and it has been shown that some such plan was reasonable and inevitable.

It may also be added, that the plan affords a moral certainty of substantial justice, which is all that can rationally be expected in similar affairs; compensa-

tion, where due, is explicitly stipulated. A fair and adequate mode of deciding and liquidating it has been settled. All the arguments which were adduced to prove the probability of good faith, in regard to the posts, apply equally to this subject. The interest which every nation has in the preservation of character, and which the most profligate dare not entirely disregard; the consideration of defeating the fulfilment of the stipulations on our part; the size of the object, certainly not of great magnitude; the very discouraging situation for replunging suddenly into a new war, in which the present war will in every event leave Great Britain;—these are reasons which afford solid ground of assurances that there will be no evasion of performance.

As to the commissioners, two of the five will be of our choice, a third may be so likewise; but should it prove otherwise, it will be surprising if one of the other three, all acting under oath, and having character at stake, shall not be disposed to do us reasonable justice.

4th. While their power is coextensive with *all* losses and damages from irregular or legal captures or condemnations, their sentence in each case is to be conclusive, and the rules which are to govern it, as prescribed by the article, are the merits of each case, justice, equity, and the law of nations. What greater latitude could have been desired to be given? What greater latitude could have been given? What else in the case was there to have been provided for? What is meant by the assertion, that the provision is not commensurate with the object?

The general and unqualified reference to the laws

of nations, dismisses all pretence to substitute the arbitrary regulations of Great Britain as rules of decision. Her instructions or orders, if incompatible with those laws, are nullities.

Thus the treaty unfetters the question between us and her, from the commencement of the war, and with her own consent, commits them at large to a tribunal to be constituted by mutual choice.

Will any man of candor and equity say that a better provision ought to have been expected than has been accomplished?

The alternative was immediate indemnification, by actual payment in whole or in part, without examination of the extent or justice of claims; or future indemnification, after a due investigation of both in some equitable and effectual mode. The first was attended with difficulties on our side, and with solid objections on the other side. The last was therefore the truly reasonable course, and it has been pursued on a very proper plan. The causes of loss and damage are fully embraced. They are referred to the decision of an unexceptionable tribunal, to be guided by unexceptionable rules, and the indemnification which may be awarded, is to be paid fully, immediately, and without *detour* by the British Government itself. Say, ye impartial and enlightened, if all this be not as it ought to have been!

CAMILLUS.

NO. XVI.

1795.

The second object of the seventh article, as stated in my last number, is "compensation to British citi-

zens, for captures of their property within the limits and jurisdiction of the United States, or elsewhere, by vessels originally armed in our ports, *in the cases in which the captured property having come within our power, there was a neglect to make restitution.*"

This precise view of the thing stipulated, is calculated to place the whole subject at once before the mind, in its true shape; to evince the reasonableness of it, and to dismiss the objections which have been made, as being foreign to the real state of the case. These objections are, in substance, that the compensation promised is of great extent and amount; that an enormous expense is likely to be incurred; and that it is difficult to prove that a neutral nation is under an obligation to go the lengths of the stipulation.

These remarks obviously turn upon the supposition, erroneously entertained or disingenuously affected, that compensation is to be made for *all captures* within our limits or jurisdiction, or elsewhere, by vessels originally armed in our ports, where restitution has not, in fact, been made. Did the stipulation stand on this broad basis, it would be justly liable to the criticism which has been applied to it. But the truth is, that its basis is far more narrow,—that instead of extending to all those captures, it is confined to the *particular cases* of them only, in which the captured property came, or was, after the capture, within our power, so as to have admitted of restitution by us but restitution was not made, through the *omission* or *neglect* of our Government. It does not extend to a single case, where the property, if taken within our jurisdiction, was immediately carried out of our reach—or where, if taken

within our jurisdiction, it was never brought within our reach, or where, if at any time within our reach, due means were employed without success to effect restitution.

It will follow from this, that the cases within the purview of the article, must be very few—for, except with regard to three prizes, made in the first instance, where special considerations restrained the Government from interposing, there has been a regular and constant effort of the executive, in which our courts have efficaciously coöperated, to restore prizes made within our jurisdiction, or by vessels armed in our ports. The extent or amount, therefore, of the compensation to be made, can by no possible means be considerable.

Let us, however, examine if the construction I give to the clause be the true one.

It is in these words: "It is agreed that in all such cases where *restitution* shall not have been made *agreeably* to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated September 5, 1793, a copy of which is annexed to this treaty, the complaints of the parties shall be and are hereby referred to the commissioners to be appointed by virtue of this article, who are hereby authorized and required to proceed in the like manner relative to these as to the other cases committed to them; and the United States undertake to pay to the complainants in specie, without deduction, the amount of such sums as shall be awarded to them respectively," etc.

The letter of Mr. Jefferson, by this reference to it, and its annexation to the treaty, is made virtually a

part of the treaty. The cases in which compensation is promised, are expressly those in which *restitution* has not been made *agreeably to the tenor of that letter.*

An analysis of the letter will of course unfold the cases intended.

1. It recapitulates an assurance before given by a letter of the 7th August, to the British Minister, that measures were taken for excluding from further asylum in our ports, vessels armed in them to cruise on nations with which we were at peace, and for the restoration of the prizes the *Lovely Lass*, *Prince William Henry*, and the *Jane* of Dublin; *and that, should the measures of restitution fail in their effect, the President considered it as incumbent on the United States to make compensation for the vessels.* These vessels had been captured by French privateers, originally armed in our ports, and had been afterwards *brought within our ports.*

2. It states that we are bound by our treaties with three of the belligerent nations,* by all the means in our power, to protect and defend their vessels and effects in our ports or waters, or on the seas near our shore, and to recover and restore the same to the right owners, when taken from them; adding, that *if all the means in our power are used*, and fail in their effect, we are *not bound* by our treaties to make compensation. It further states, that though we have no similar treaty with Great Britain, it was the opinion of the President, that we should use towards that nation the same rule which was to govern us with those other nations, and

* France, Holland, and Prussia, and our treaty with Sweden includes a like proviso.

even to extend it to captures made on the high seas and *brought into our ports*, if done by vessels which had been armed within them.

3. It then draws this conclusion, that having, for particular reasons, *forborne to use all means in our power* for the restitution of the three vessels mentioned in the letter of the 7th of August, the President thought it incumbent upon the United States to make compensation for them; and though nothing was said in that letter, of other vessels, taken *under like circumstances* and *brought in* after the 5th of June, and before the date of that letter, yet when the *same forbearance* had taken place, it was his opinion that *compensation* would be *equally due.* The cases, then, here described, are those in which illegal prizes are made and *brought into our ports* prior to the 7th of August, 1793, and in which we had *forborne to use all the means in our power* for restitution. Two characters are made essential to the cases in which the compensation is to be made: one, that the prizes *were brought within our ports*—the other, that we *forbore to use all the means in our power* to restore them.

4. The letter proceeds to observe, that, as to prizes made under the *same circumstances, and brought in* after the date of that letter, the President had determined *that all means in our power should be used* for their restitution; that if *these failed*, as we should not be bound to make compensation to the other powers, in the analogous case, he did *not mean to give an opinion that it ought to be done to Great Britain.* But still, if any case shall arise subsequent to that

date, *circumstances of which shall place them on a similar ground with those before it*, the President would think compensation incumbent on the United States. The additional cases of which an expectation of compensation is given in this part of the letter, must stand on *similar ground with those before described*—that is, they must be characterized by the two circumstances of a *bringing within our ports*, and a *neglect to use all the means in our power* for their restitution. Everywhere the idea of compensation is negatived where the prizes have not come within our power, or where we have not forborne to use the proper means to restore them.

The residue of the letter merely contains suggestions for giving effect to the foregoing assurances.

This analysis leaves no doubt that the true construction is such as I have stated. Can there be any greater doubt that the expectations given by the President, in the first instance, and which have been only ratified by the treaty, were in themselves proper, and have been properly ratified?

The laws of nations, as dictated by reason, as received and practised upon among nations, as recognized by writers, establish these principles for regulating the conduct of neutral Powers.

A neutral nation (except as to points to which it is clearly obliged by antecedent treaties) whatever may be its opinion of the justice or injustice of the war on either side, cannot, without departing from its neutrality, *favor* one of two belligerent parties more than the other—*benefit* one, to the *prejudice* of the other—furnish or permit the furnishing to either, the

instruments of acts of hostility, or any warlike succor or aid whatever, especially without extending the same advantage to the other; cannot suffer any force to be exerted, or warlike enterprise to be carried on from its territory, by one party against the other, or the preparation or organization there of the means of annoyance; has a right and is bound to prevent acts of hostility within its jurisdiction; and, if they happen against its will, to restore any property which may have been taken in exercising them. These positions will all be found supported in the letter or spirit of the following authorities: Barbeyrac's note on Puffendorff, B. VIII., Ch. VI., f. 7. Grotius, B. III., Ch. XVII., f. 3. Bynkershoeck, B. I., Ch. VIII., p. 61–65. Ch. XI., p. 69, 70. Vatel, B. III., Ch. VII. Bynkershoeck cites examples of restitution in the case mentioned.

Every treaty we have made with foreign Powers promises protection within our jurisdiction, and the restoration of property taken there. A similar stipulation is, indeed, a general formula in treaties, giving an express sanction to the rule of the laws of nations in this particular.

An act of Congress of the 5th of June, 1794, which is expressly a declaratory act, recognizes at large the foregoing principles of the laws of nations, providing, among other things, for the punishment of any person who, within the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or is knowingly concerned in furnishing, fitting out, or arming, any ship or vessel, with intent to be employed in the service of a foreign

state, to cruise or commit hostilities upon the subjects or citizens of another foreign state, with which the United States are at peace; or issues or delivers a commission for any such ship or vessel, or increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel, in the service of a foreign state at war with another foreign state, with which the United States are at peace; or within the territory of the United States, begins or sets on foot, or provides or prepares the means of any military expedition or enterprise, to be carried on from thence against the dominions of any foreign state, with which the United States are at peace.

And our courts have adopted, in its fullest latitude, as conformable, in their opinion, with those laws, the principle of restitution of property, when either captured within our jurisdiction, or elsewhere, by vessels armed in our ports. The Supreme Court of the United States has given to this doctrine, by solemn decisions, the most complete and comprehensive sanction.

It is, therefore, undoubtedly the law of the land, determined by the proper constitutional tribunal, in the last resort, that *restitution is due* in the above-mentioned cases.

And it is a direct and necessary consequence from this, that where it is not made by reason of the neglect of the government, to use the means in its power for the purpose, there results an obligation to make reparation. For, between nations, as between

individuals, wherever there exists a perfect obligation to do a thing, there is a concomitant obligation to make reparation for omissions and neglects.

The President was, therefore, most strictly justifiable, upon principle, in the opinion which he communicated, that, in the cases of such omissions or neglects, compensation ought to be made. And in point of policy, nothing could be wiser; for had he not done it, there is the highest probability that war would have ensued.

Our treaty with France forbids us expressly to permit the privateers of the enemy to arm in our ports, or to bring or sell there the prizes which they have made upon her. We could not, for that reason, have made the privilege of arming in our ports, if it had been allowed to France, reciprocal. The allowance of it to her would, consequently, have been a clear violation of neutrality, in the double sense of permitting a military aid, and of permitting it to the one and refusing it to the other. Had we suffered France to equip privateers in our ports, to cruise thence upon her enemies, and to bring back and vend there the spoils or prizes taken, we should have become by this the most mischievous foe they could have. For, while all our naval resources might have augmented the force of France, our neutrality, if tolerated, would, in a great degree, have sheltered and protected her cruisers. Such a state of things no nation at war could have acquiesced in. And, as well to the efficacy of our endeavors to prevent equipments in our ports as to the proof of the sincerity of those endeavors, it was essential that we

should restore the prizes which came within our reach, made by vessels armed in our ports. It is known that, notwithstanding the utmost efforts of the Government to prevent it, French privateers have been clandestinely equipped in some of our ports, subsequent to the assurances which were given that the practice would be discountenanced. If prizes made by such vessels were suffered to be brought into our ports, and sold there, this would be not only a very great encouragement to the practice, but it would be impossible that it should be regarded in any other light than as a connivance.

In such circumstances, can we blame our Chief Magistrate? Can we even deny him praise, for having diverted an imminent danger to our peace, by incurring the responsibility of giving an expectation of compensation? The conjucture we may remember was critical and urgent. Congress were at the time in recess. A due notice to convene them in so extensive a country, can hardly be rated at less than three months.

In this situation our envoy found the business. It is not true, in the sense in which it has been advanced, that he was to be governed by the fitness of the thing, unmindful of the opinion of the President. An opinion of the chief magistrate of the Union, was to a diplomatic agent an authority and a guide, which he could not justifiably have disregarded. The claim of compensation, on the other side, was greatly *fortified* by this opinion. Nor was it a matter of indifference to our national delicacy and dignity, that the expectation given by it should

be fulfilled. It would have been indecent in our envoy to have resisted it. It was proper in him, by acceding to it, to refer the matter to the ultimate decision of that authority, which, by our Constitution, is charged with the power of making treaties. It was the more proper, because the thing was intrinsically right. Every candid man, every good citizen, will rejoice that the President acted as he did in the first instance—that our envoy acted as he did in the second, and that the conduct of both has received the final constitutional sanction.

The opinions of Mr. Jefferson, when they can be turned to the discredit of the treaty, are with its adversaries oracular truths. When they are to support it, they lose all their weight. The presumption, that the letter referred to had the concurrence of the judgment of that officer, results from a fact, generally understood and believed—namely: that the proceedings of the President, at the period when it was written, in relation to the war, were conformable with the unanimous advice of the heads of the executive departments.

This case of British property captured by privateers originally armed in our ports, falsifies the assertion of the adversaries of the treaty, that the pretensions of Great Britain have been fully provided for. She had a colorable ground to claim compensation for *all captures* made by vessels armed in our ports, whithersoever carried in, or howsoever disposed of, especially where their equipment had been tolerated by our Government. This toleration was to be referred, as well from a forbearance to suppress

those vessels when they came within our power, as from an original permission. Had compensation been stipulated on this scale, it is not certain that it would not have amounted to as much more than that which has been promised, as would counterbalance our claims for negroes carried away, and for the detention of the posts. But instead of this, it is narrowed down by the treaty to such prizes of those vessels as were brought within our ports, and in respect to which we forebore to use all the means in our power for restitution. Here, then, is a set-off against doubtful and questionable claims relinquished on our side. Here, also, is another proof how much the antagonists of the treaty are in the habit of making random assertions. But can we wonder at it, when we reflect that they have undertaken to become the instructors of their fellow-citizens on a subject, in the examination of which they unite a very superficial knowledge with the most perverse dispositions?

CAMILLUS.

NO. XVII.

1795.

The eighth article provides merely, that the commissioners to be appointed in the three preceding articles, shall be paid in such manner as shall be agreed between the parties, at the time of the exchange of the ratification of the treaty; and that all other expenses attending the commissions, shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by a ma-

jority of the commissioners; and that in case of death, sickness, or necessary absence of a commissioner, his place shall be supplied in the same manner as he was first appointed—the new commissioner to take the same oath or affirmation, and to perform the same duties as his predecessor.

Could it have been imagined, that even this simple and equitable provision was destined not to escape uncensured? As if it was predetermined that not a single line of the treaty should pass without the imputation of guilt; nothing less than an infraction of the Constitution of the United States has been charged upon this article. It attempts, we are told, a disposition of the public money, unwarranted by and contrary to the Constitution. The examination of this wonderful, sagacious objection, with others of a similar complexion, must be reserved for the separate discussion which has been promised of the constitutionality of the treaty.

Let us proceed, for the present, to the 9th article.

This article agrees that British subjects who *now hold* lands in the territories of the United States, and American citizens who *now hold* lands in the dominions of his Britannic Majesty, shall continue to hold them, *according to the nature and tenure of their respective estates and titles therein;* and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they, nor their heirs or assigns, *so far as may respect the said lands,* and the legal remedies incidental thereto, shall be *regarded as aliens.*

The misapprehension of this article, which was first

ushered into public view in a very incorrect and insidious shape, and was conceived to amount in the grant of an indefinite and permanent right to British subjects to hold lands in the United States, did more, it is believed, to excite prejudices against the treaty than any thing that is really contained in it. And yet when truly understood, it is found to be nothing more than a confirmation of those rights to lands, which, prior to the treaty, the laws of the several States allowed British subjects to hold; with this in considerable addition, perhaps, that the heirs and assigns of those persons, *though aliens*, may hold the same lands: but no right whatever is given to lands of which our laws did not permit and legalize the acquisition.

These propositions will now be elucidated.

The term "hold" in the legal code of Great Britain and of these States has the same and that a precise technical sense. It imports a *capacity legally* and *rightfully* to *have* and *enjoy* real estate, and is contra-distinguished from the mere capacity of *taking* or *purchasing*, which is sometimes applicable to the acquisition of a thing, that is forfeited by the very act of acquisition. Thus an alien may *take* real estate by *purchase*, but he cannot hold it. Holding is synonymous with tenure, which, in the feudal system, implies *fealty*, of which an alien is incapable. Land, therefore, is forfeited to the Government the instant it passes to an alien. The Roman law nullifies the contract entirely, so that nothing passes by the grant of land to an alien; but our law, derived from that of England, permits the land to pass for the purpose of

forfeiture to the State. This is not the case with regard to *descent*, because the succession or transmission there, being an act of law, and the alien being disqualified to hold, the law, consistent with itself, casts no estate upon him.

The following legal authorities, selected from an infinite number of similar ones, establish the above positions, viz.: "Coke on Littleton," pages 2, 3: "Some men have *capacity* to *purchase*, but not *ability* to *hold*. Some *capacity* to *purchase* and *ability* to *hold* or *not to hold*, at the election of themselves and others. Some, capacity to *take* and to *hold*. Some, neither capacity to *take* nor to *hold*. And some are specially disabled to *take* some *particular thing*. If an alien, Christian or infidel, *purchase* houses, lands, tenements, or hereditaments to him or his aliens, albeit he can have no heirs, yet he is of capacity to *take* a fee simple, but *not to hold*." The same, page 8: "If a man seized of land in fee, hath issue an alien, he cannot be heir, *propter defectum subjectionis*." Blackstone's Commentaries, Book II., Chap. XVIII., § 2: "Alienation to an alien is a cause of forfeiture to the crown of the lands so alienated, not only on account of his *incapacity to hold* them, but likewise on account of his presumption in attempting, by an act of his own, to acquire real property." *Idem.*, Chap. XIX., § 1.: "The case of an alien born, is also peculiar; for he may *purchase* a thing; but, after purchase, he can hold nothing, except a lease for years of a house, for the convenience of merchandise."

Thus it is evident, that by the laws of England, which it will not be denied, agree in principle with ours, an ALIEN may *take* but cannot *hold* lands.

It is equally clear, the laws of both countries agreeing in this particular, that the word *hold*, used in the article under consideration, must be understood according to those laws, and therefore can only apply to those cases in which there was a *legal capacity to hold*—in other words, those in which our laws permitted the subjects and citizens of the two parties to *hold* lands in the territories of each other. Some of these cases existed prior to the treaty of peace; and where confiscations had not taken place, there has never been a doubt, that the property was effectually protected by that treaty. Others have arisen since that treaty, under special statutes of particular States. Whether there are any others depending on the principles of the common law, need not be inquired into here, since the late treaty will neither strengthen nor impair the operation of those principles.

Whatever lands, therefore, may have been purchased by any British subject, since the treaty of peace, which the laws of the State wherein they were purchased did not permit him to acquire and hold, are entirely out of the protection of the article under consideration; the purchase will not avail him; the forfeiture, which was incurred by it, is still in full force. As to those lands which the laws of a State allowed him to purchase and hold, he owes his title to them, not to the treaty.

Let us recur to the words of the article: "British subjects, who *now hold* lands, shall *continue* to *hold* them *according to the nature and tenure of their respective estates and titles therein.*" But it has been

seen, that to *hold* lands is to own them in a legal and competent capacity, and that an alien has no such capacity. The lands, therefore, which, by reason of the alienage of a British subject, he could not, prior to the treaty, legally purchase and hold—he cannot, under the treaty, continue to hold. As if it was designed to render this conclusion palpable, the provision goes on to say, "According to the nature and tenure of their respective estates and titles therein." This is equivalent to saying, they shall continue to hold as they before held. If they had no valid estate or title before, they will of course continue to have none—the expressions neither give any new, nor enlarge any old estate.

The succeeding clauses relate only to descents or alienations of the land originally legally holden. Here the disability of alienage is taken away from the heirs and assigns of the primitive proprietors. While this will conduce to private justice, by enabling the families and friends of individuals to enjoy their property by descent or devise, which, it is presumable was the main object of the provision, there is no consideration of national policy that weighs against it. If we admit the whole force of the argument, which opposes the expediency of permitting aliens to hold lands (and concerning which I shall barely remark here, that it is contrary to the practice of several of the States, and to a practice from which some of them have hitherto derived material advantages) the extent to which the principle is affected by the present treaty is too limited to be felt, and in the rapid mutations of property, it will every day

diminish. Every alienation of a parcel of the privileged land to a citizen of the United States, will, as to that land, by interrupting the chain, put an end to the future operations of the privilege; and the lapse of no great number of years may be expected to make an entire revolution in the property, so as to divest the whole of the privilege.

To manifest the unreasonableness of the loud and virulent clamor, which was incited against this article, it has been observed by the friends of the instrument, that our treaty with France not only grants a much larger privilege to the citizens of France, but goes the full length of removing universally and perpetually from them the disability of alienism, as to the ownership of lands. This position has been flatly denied by some of the writers on the other side. Decius in particular, after taking pains to show that it is erroneous—that the terms "goods movable and immovable," in the article of our treaty with France, mean only *chattels* real and personal in the sense of our law, and exclude a right to the freehold and inheritance of lands, triumphantly plumes himself on the detection of a fallacy of the writer of certain "candid remarks on the treaty," who gives the interpretation above stated to that article.

The error of Decius's interpretation, proceeds from a misunderstanding of the term goods, in the English translation of the article, to which he annexes the meaning assigned to that term in our law, instead of resorting, as he ought to have done, to the French laws for the true meaning of the correspondent term *biens*, which is that used in the French original.

Goods, in our law, no doubt, mean chattel interests; but goods or "*biens*" in the French law, mean all kinds of property, *real* as well as personal. It is equivalent to, and derived from, the term *bona*, in the Roman law, answering most nearly to "*estates*" in our law, and embracing inheritances in land, corporeal and incorporeal hereditaments, as well as property in movable things.

When it is necessary to distinguish one species from another, it is done by an adjective—"*biens meubles et immeubles*," answering to *bona* or *res mobilia*, or *immobilia*, things movable and immovable, *estates* real and personal. The authorities at foot* will show the analogy of these different terms in the three different languages; but for fixing the precise sense of those used in the treaty, I have selected and shall quote two authorities from French books, which are clear and conclusive on the point. One will be found in the work of a French lawyer, entitled, "Collection de Decisions Nouvelles, et de Notions relatives a la Jurisprudence actuelle," under the article BIENS,† and is in these words, viz.: "The word *bien* has a general signification, and compre-

* Justinian's Institutes, Lib. III., Tit. 10, 11, 12, 13. Lib. IV., Tit. 2. Domat's Civil and Public Law. Prel. Book, Tit. 3, Secs. 1, 2. Book IV., Sec. 1.

† Biens. Le mot, bien, a une signification generale, & comprend toutes sortes de possessions, comme meubles, immeubles, acquêts, conquêts, propres, etc.

On distingue dans les biens des particuliers, les meubles & les immeubles, les acquêts & les propres; & entre les propres, les paternels & les maternels, les anciens & les naissans. Les biens meubles sont ceux qui peuvent se mouvoir & se transporter d'un lieu en un autre, comme des denrees, des marchandises, de deniers comptans, de la vaisselle d'agent, des bestiaux, des utensiles d'hotel. Les biens immeubles sont ceux qui ne peuvent se mouvoir ou se transporter d'un lieu dans un autre, comme des heritages, des maisons, etc.

hends *all sorts of possessions* as *movables, immovables, purchases, acquisitions* by marriage, *inheritance*, etc. It is distinguished into these particulars: movables, immovables, purchases, and inheritances; subdividing inheritances into *paternal and maternal, old and new.* Movable *biens* are those which may be moved and transported from one place to another, as wares, merchandises, and current money, plate, beasts, household utensils, etc. Immovable *biens* are those which cannot be moved from one place to another, as inheritances, houses, etc. *Biens* are distinguished again into corporeal and incorporeal." Another * is drawn from the celebrated institutes of the French law, by Mr. Argou, and is in these words: "Biens—This is in general whatever composes our riches. There are two sorts of *biens*, movable and immovable. Movable, all that may be transported from one place to another. Immovable, lands or what is presumed to have the nature of land. They are distinguished into two kinds, real and fictitious. Real are not only the *substance of the earth*, which is called *fond;* but all that adheres to its surface, whether from nature, as trees, or from the hand of man, as houses and other buildings. The others are called fictitious, because they are only real by fiction, as offices which are

*Biens.—C'est en generale tout ce qui compose nos richesses; il y a deux sortes de biens, les meubles & less immeubles; meubles, tout ce qui peut etre transporté d'un lieu à un autre: immeubles—biens en fonds, ou qui sont presumé avoir la nature de fonds—On distingue deux sorts d'immeubles, les réels, & les fictifs; les immeubles réels sont non seulement la substance meme de la terre qui est ce qu'on appelle le fond, mais tout ce qui est adherent à sa surface, soit par la nature, comme les arbres, soit par la main des hommes, comme les maisons & autre batiments—On a appellé l'autre espece d'immeubles, immeubles fictifs; parce qu'ils ne sont telles que par fiction; de ce nombre sont les offices venaux, casuels, & les rentes constitutués.

vendible, and subject to fiscal reversion, rent-charges, etc." The signification of *bona* in the Roman law, corresponds, as was observed above, with that of *biens* in the French. "*Bonorum appellatio universitatem quandem, et non singulas res demonstrat*"; which may be rendered, "The appellation of BONA designates the totality of property or estate, and not particular things"—and hence it is, that the *cessio bonorum* of a debtor is the surrender of his whole fortune.

Both these terms, "*bona*" and "*biens*" are indiscriminately translated *goods, estates, effects, property.** In our treaty with France they are translated "goods"; but it is evidently a great mistake to understand the expression in the limited sense of our law. Being a mere word of translation, it must be understood according to the meaning of the French text; for it is declared in the conclusion of the treaty that it was originally composed and concluded in the French tongue. Moreover, the term *goods*, when used in our language as the equivalent of the term *bona*, or *biens*, is always understood in the large sense of the original term; in other words, as comprehending real and personal estate, inheritances as well as chattel interests.

Having now established the true meaning of the terms "goods movable and immovable," let us proceed with this guide to a review of the article.

Its first and principal feature is: "that the subjects and inhabitants of the United States, or any of them, shall not be reputed AUBAINS in France." This is the

* See authorities before cited. See also Puffendorff, Book VIII., Ch. V., sec. 8; Grotius, Book III., Ch. V., sec. 11, 12; Vatel, Book I., Ch. XX., sec. 245, 246, 247.

same as if it had been said: "they shall not be reputed ALIENS." For the definition of AUBAINS, as given in the work before first cited, is this: "AUBAINS are persons not born under the dominion of the king," the exact equivalent of the definition of ALIEN in the English law. If our citizens are not to be reputed aliens in France, it follows that they must be exempted from alien disabilities, and must have the same rights with natives, as to acquiring, conveying, and succeeding to real and other estate. Accordingly the article, having pronounced that our citizens shall not be reputed aliens in France, proceeds to draw certain consequences. The first is, that they shall not be subject to the *droit d'aubaine.* The *droit d'aubaine* was, under the monarchy, one of the regalia; it was the right of the prince to succeed to all estates or property situate in the kingdom belonging to foreigners who died without legitimate children, born in the kingdom.

It is to be observed that the laws of France permitted foreigners to acquire and hold even real estates, subject to the right of the sovereign, in case of demise without issue born under his allegiance. But this right of the sovereign, as to American citizens, is abrogated by the treaty; so that their legal representatives, wherever born, may succeed to all the property, real or personal, which they may have acquired in France.

And, in conformity to this, it is further declared that they may, by testament, donation, or otherwise, dispose of their goods, movable and immovable (that is, as we have seen, their estates, real and personal) in favor of such persons as to them shall appear good; so

that their heirs, subjects of the United States, whether residing in France or elsewhere, may succeed to them, *ab intestato*, without being obliged to obtain letters of naturalization.

These are the stipulations on the part of France; and they amount to a removal from the citizens of the United States of alien disabilities in that country as to property. I say as to property, because, as to civil and ecclesiastical employments, it seems to have been a principle of the French law that the incapacity of foreigners could only be removed by special dispensations, directed to the particular object.

What are the correlative stipulations on the part of the United States? They are in these terms: "The subjects of the most Christian king shall enjoy, on their part, in all the dominions of the said States, an *entire* and *perfect reciprocity*, relative to the stipulations contained in this article. But it is at the same time agreed that its contents shall not affect the laws made, or that may be made hereafter in France, against emigrations, which shall remain in all their force and vigor; and the United States, on their part, or any of them, shall be at liberty to enact such laws relative to that matter as to them shall appear proper."

Since, then, the article removes from our citizens the disabilities of aliens as to property in France, and stipulates for her citizens an entire and perfect reciprocity in the United States, it follows that Frenchmen are equally exempt in the United States from the like disabilities. They may, therefore, hold, succeed to, and dispose of real estates.

It appears that the sense both of the French and of

the American Government has corresponded with this construction.

In the year 1786, the Marquis Bellegarde and the Chevalier Meziere, sons of the two sisters of General Oglethorpe, represented to the Count de Vergennes, the French minister for foreign affairs, that they met with impediments to their claims from the laws of Georgia, prohibiting aliens to hold lands. M. de Vergennes communicated their complaint to Mr. Jefferson, our then minister in France, observing, that the alien disabilities of the complainants having, in common with those of all Frenchmen, been removed by the treaty between the two countries, they ought to experience no impediments on that account, in the succession to the estate of their uncle, and that the interfering laws of Georgia ought to be repealed so as to agree with the treaty.

Mr. Jefferson, in reply, states the case of the complainants, proving that they were precluded from the succession for other reasons than that of alienism; and then adds, that as the treaty with France having placed the subjects of France in the United States on a footing with natives, as to conveyances and *descents* of property, there is no necessity for the assemblies to pass laws on the subject, the treaty being a law, as he conceives, superior to those of particular assemblies, and repealing them when they stand in the way of its operation.

Where now, DECIUS, is thy mighty triumph? Where the trophies of thy fancied victory? Learn that in political, as well as other science,

> "Shallow draughts intoxicate the brain,
> And drinking largely, sobers us again."

The fixing the true sense of the article in the treaty with Great Britain, is alone a refutation of most of the objections which have been made to it, by showing, that they apply not to what really exists, but to a quite different thing. It may be useful, however, to pass them briefly in review with some cursory remarks.

The article, it is said, infringes the rights of the States, and impairs the obligation of private contracts, permits aliens to hold real estates against the fundamental policy of our laws, and at the hazard of introducing a dangerous foreign influence; is unequal, because no American has been hardy enough, since the peace, to purchase lands in England, while millions of acres have been purchased by British subjects in our country, with knowledge of the risk—is not warranted by the example of any other treaty we have made; for if even that of France should contain a similar provision (which is denied) still the difference of circumstances would make it an inapposite precedent; since this was a treaty made, *flagrante bello*, in a situation which justified *sacrifices*.

These objections have been formally and explicitly urged. One writer, afraid of risking a direct assertion, but insidiously endeavoring to insinuate misconception, contents himself with putting a question. What (says he) will be the effect of this article as to the revival of the claims of British subjects, traitors, or exiles?

As to the infraction of the rights of the States, this, it is presumed, must relate to the depriving them of forfeitures of alien property. But as the article gives no right to a British subject to hold any lands which the laws of the State did not previously authorize him

to hold, it prevents no forfeiture to which he was subject by them, and, consequeutly, deprives no State of the benefit of any such forfeiture. With regard to escheats for want of qualified heirs, it depended on every proprietor to avoid them by alienations to citizens.

As to impairing the obligation of private contracts, it is difficult to understand what is meant. Since land, purchased by an alien, passes from the former proprietor, and becomes forfeited to the State, can it be afterwards the subject of a valid private contract? If the effect of the article was to confirm a defective title derived from the alien, how could this impair the obligation of any other private contract concerning it? But whatever may be intended, it is enough to say, that the article does not confirm the title to any land which was not before good. So that the ground of the objection fails.

As to permitting aliens to hold land, contrary to the policy of our laws, it has been shown, that on a true construction, it only applies to the very limited case of the alien heirs and assigns of persons who before rightfully held lands, and is confined to the identical lands so previously holden; that its greatest effect must be insignificant; and that this effect will continually decrease.

As to the millions of acres, said to have been purchased by British subjects since the peace, it has been shown, that if by the laws of the States in which the purchases were made, they were illegally acquired, they still remain in the situation in which they were before the treaty.

As to there being no precedent of a similar stipulation with any other country, it has been proved that, with *France*, we have one much broader. The idea that this was a sacrifice to the necessity of our situation, *flagrante bello*, is new. Are we then to understand that we in this instance gave to France, as the *price* of her assistance, a privilege in our country, which leads to the introduction of a foreign influence, dangerous to our independence and prosperity? For to this result tends the argument concerning the policy of the exclusion of aliens. Or is it that no privilege granted to France can be dangerous?

Those who are not orthodox enough to adopt this last position may, nevertheless, tranquillize themselves about the consequences. This is not the channel through which a dangerous foreign influence can assail us. Notwithstanding all that has been said, it may, perhaps, bear a serious argument, whether the permission to foreigners to hold lands in our country might not, by the operation of private interest, give us more influence upon foreign countries than they will ever acquire upon us from the holding of those lands. Be this as it may, could we not appeal to some *good patriots*, as they style themselves, by way of eminence, for the truth of the observation that foreign governments have more direct and powerful means of influence than can ever result from the right in question?

Moreover, there was a peculiar reason for the provision which has been made in our last treaty, not applicable to any treaty with another country. The former relative situation of the United States and Great Britain led to the possession of lands by the

citizens of each in the respective territories. It was natural and just to secure by treaty their free transmission to the heirs and assigns of the parties.

As to the revival of the claims of traitors or exiles, if property, *confiscated* and *taken away*, is property *holden* by those who have been deprived of it, then there may be ground for alarm on this score. How painful is it to behold such gross attempts to deceive a whole people on so momentous a question! How afflicting, that imposture and fraud should be so often able to assume with success the garb of patriotism? And that this sublime virtue should be so frequently discredited by the usurpation and abuse of its name!

CAMILLUS.

NO. XVIII.

1795.

It is provided by the tenth article of the treaty that "neither debts due from individuals of one nation to individuals of the other, nor shares, nor moneys, which they may have in the public funds, or in the public or private banks, shall ever in any event of war, or national difference, be sequestered or confiscated; it being unjust and impolitic, that debts and engagements contracted and made by individuals, having confidence in each other, and in their respective governments, should ever be destroyed or impaired by national authority on account of national differences and discontents."

The virulence with which this article has been attacked cannot fail to excite very painful sensations in every mind duly impressed with the sanctity of

public faith, and with the importance of national credit and character; at the same time that it furnishes the most cogent reasons to desire that the preservation of peace may obviate the pretext and the temptation to sully the honor and wound the interests of the country by a measure which the truly enlightened of every nation would condemn.

I acknowledge, without reserve, that in proportion to the vehemence of the opposition against this part of the treaty, is the satisfaction I derive from its existence, as an obstacle the more to the perpetration of a thing, which, in my opinion, besides deeply injuring our real and permanent interest, would cover us with ignominy. No powers of language at my command can express the abhorrence I feel at the idea of violating the property of individuals, which, in an authorized intercourse, in time of peace, has been confided to the faith of our Government and laws, on account of controversies between nation and nation. In my view, every moral and every political sentiment unite to consign it to execration.

Neither will I dissemble, that the dread of the effects of the spirit which patronizes that idea, has ever been with me one of the most persuasive arguments for a pacific policy on the part of the United States. Serious as the evil of war has appeared, at the present stage of our affairs, the manner in which it was to be apprehended it might be carried on, was still more formidable, in my eyes, than the thing itself. It was to be feared, that in the fermentation of certain wild opinions, those wise, just, and temperate maxims, which will for ever constitute the true security and felicity of a state, would be overruled; and that a war upon credit,

eventually upon property, and upon the general principles of public order, might aggravate and embitter the ordinary calamities of foreign war. The confiscation of debts due to the enemy, might have been the first step of this destructive process. From one violation of justice to another, the passage is easy. Invasions of right, still more fatal to credit, might have followed; and this, by extinguishing the resources which that could have afforded, might have paved the way to more comprehensive and more enormous depredations for a substitute. Terrible examples were before us; and there were too many not sufficiently remote from a disposition to admire and imitate them.

The earnest and extensive clamors against the part of the treaty under consideration, confirm that anticipation; and while they enhance the merit of the provision, they also inspire a wish, that some more effectual barrier had been erected against the possibility of a contrary practice being ever, at any ill-fated moment, obtruded upon our public councils. It would have been an inestimable gem in our national Constitution, had it contained a positive prohibition against such a practice, except, perhaps, by way of reprisal for the identical injury on the part of another nation.

Analogous to this is that liberal and excellent provision, in the British Magna Charta, which declares, that "if the merchants of a country at war with England, are found there in the beginning of the war, they shall be attached without harm of body or *effects*, until it is known in what manner English merchants are treated in the enemy's country; and if they are safe, that the

foreign merchants shall also be safe." * The learned Lord Coke pronounces this to be *jus belli* or law of war. And the elegant and the enlightened Montesquieu, speaking of the same provision, breaks out into this exclamation: "It is noble that the English nation have made this one of the articles of its liberty." † How much it is to be regretted, that our magna charta is not unequivocally decorated with a like feature; and that, in this instance, we, who have given so many splendid examples to mankind, are excelled in constitutional precautions for the maintenance of justice!

There is, indeed, ground to assert, that the contrary principle would be repugnant to that article of our Constitution, which provides, that "no State shall pass any law impairing the obligation of contracts." The spirit of this clause, though the letter of it be restricted to the States individually, must, on fair construction, be considered as a rule for the United States; and if so, could not easily be reconciled with the confiscation or sequestration of private debts in time of war. But it is a pity, that so important a principle should have been left to inference and implication, and should not have received an express and direct sanction.

This position must appear a frightful heresy in the eyes of those who represent the confiscation or sequestration of debts, as our best means of retaliation and

* Si Mercatores sint de terra contra nos guerrira, et tales inveniantur in terra nostra in principio guerræ, attachientur sine damno corporum suorum vel *rerum*, donec sciatur a nobis vel a capitali justiciario nostro quo modo mercatores terræ nostræ tractantur qui tunc inveniantur in terra illa contra nos guerrira; et si nostri salvi sint ibi, alii salvi sint in terra nostra. Magna Charta, cap. xxx.

† "Spirit of Laws," Book XX., Chap. XIII.

coercion, as our most powerful, sometimes as our only, means of defence.

But so degrading an idea will be rejected with disdain, by every man who feels a true and well-informed national pride; by every man who recollects and glories, that in a state of still greater immaturity, we achieved independence without the aid of this dishonorable expedient;* that even in a revolutionary war, a war of liberty against usurpation, our national councils were too magnanimous to be provoked or tempted to depart so widely from the path of rectitude; by every man, in fine, who, though careful not to exaggerate, for rash and extravagant projects, can nevertheless fairly estimate the real resources of the country, for meeting dangers which prudence cannot avert.

Such a man will never endure the base doctrine, that our security is to depend on the tricks of a swindler. He will look for it in the courage and constancy of a free, brave and virtuous people—in the riches of a fertile soil—an extended and progressive industry—in the wisdom and energy of a well-constituted and well-administered government—in the resources of a solid, if well-supported, national credit—in the armies, which, if requisite could be raised—in the means of maritime annoyance, which if necessary, could be organized, and

* The federal government never resorted to it; and a few only of the State Governments stained themselves with it. It may, perhaps, be said, that the Federal Government had no power on the subject; but the reverse of this is truly the case. The Federal Government alone had power. The State Governments had none, though some of them undertook to exercise it. This position is founded on the solid ground that the confiscation or sequestration of the debts of an enemy is a high act of reprisal and war, necessarily and exclusively incident to the power of making war, which was always in the Federal Government.

with which we could inflict deep wounds on the commerce of a hostile nation. He will indulge an animating consciousness, that while our situation is not such as to justify our courting imprudent enterprises neither is it such as to oblige us, in any event, to stoop to dishonorable means of security, or to substitute a crooked and piratical policy, for the manly energies of fair and open war.

That is the consequence of the favorite doctrine that the confiscation or sequestration of private debts is our most powerful, if not our only, weapon of defence; Great Britain is the sole power against whom we could wield it, since it is to her citizens alone, that we are largely indebted. What are we to do, then, against any other nation which might think fit to menace us? Are we, for want of adequate means of defence, to crouch beneath the uplifted rod, and, with abject despondency, sue for mercy? Or has Providence guaranteed us especially against the malice or ambition of every power on earth, except Great Britain?

It is at once curious and instructive to mark the inconsistencies of the disorganizing sect. Is the question, to discard a spirit of accommodation, and rush into war with Great Britain? Columns are filled with the most absurd exaggerations, to prove that we are able to meet her, not only on equal, but superior terms. Is the question, whether a stipulation against the confiscation or sequestration of private debts ought to have been admitted into the treaty? Then are we a people destitute of the means of war, with neither arms, nor fleets, nor magazines—then is our best, if not our only, weapons of defence, the power of confiscating or

sequestrating the debts which are due to the subjects of Great Britain; in other words, the power of committing fraud, of violating the public faith, of sacrificing the principles of commerce, of prostrating credit. Is the question, whether free ships shall make free goods, whether naval stores shall or shall not be deemed contraband? Then is the appeal to what is called the *modern* law of nations; then is the cry, that recent usage has changed and mitigated the rigor of ancient maxims. But is the question, whether private debts can be rightfully confiscated or sequestered? Then ought the utmost rigor of the ancient doctrine to govern, and modern usage and opinion to be discarded. The old rule or the new is to be adopted or rejected, just as may suit their convenience.

An inconsistency of another kind, but not less curious, is observable in positions, repeatedly heard from the same quarter, namely, that the sequestration of debts is the only peacable means of doing ourselves justice and avoiding war. If we trace the origin of the pretended right to confiscate or sequester debts, we find it, in the very authority, principally relied on to prove it, to be this (Bynkershoeck, questiones juris publici, I. s. 2): "Since it is the *condition* of WAR, that ENEMIES may be deprived of all their rights, it is reasonable, that every thing of an enemy's, found among his enemies, should change its owner, and go to the treasury." Hence it is manifest, that the right itself, if it exist, presupposes, as the *condition* of its exercise, an *actual state of war*, the relation of *enemy to enemy*. Yet we are fastidiously and hypocritically told, that this high and explicit mode of war, is a peaceable

means of doing ourselves justice and avoiding war. Why are we thus told? Why is this strange paradox attempted to be imposed upon us? Why, but that it is the policy of the conspirators against our peace, to endeavor to disguise the hostilities, into which they wish to plunge us, with a specious outside, and to precipitate us down the precipice of war, while we imagine we are quietly and securely walking along its summit.

Away with these absurd and incongruous sophisms! Blush, ye apostles of temerity, of meanness, and of deception! Cease to beckon us to war, and at the same time to freeze our courage by the cowardly declaration that we have no resource but in fraud! Cease to attempt to persuade us that peace may be obtained by means which are unequivocal acts of war. Cease to tell us that war is preferable to dishonor, and yet, as our first step, to urge us into irretrievable dishonor. A magnanimous, a sensible people cannot listen to your crude conceptions. Why will ye persevere in accumulating ridicule and contempt upon your own heads?

In the further observations which I shall offer on this article, I hope to satisfy, not the determined leaders or instruments of faction, but all discerning men, all good citizens, that, instead of being a blemish, it is an ornament to the instrument in which it is contained; that it is as consistent with true policy as with substantial justice; that it is, in substance, not without precedent in our other treaties, and that the objections to it are futile.

CAMILLUS.

NO. XIX.

1795.

The objects protected by the tenth article are classed under four heads: 1, Debts of individuals to individuals; 2, property of individuals in the public funds; 3, property of individuals in public banks; 4, property of individuals in private banks. These, if analyzed, resolve themselves, in principle, into two discriminations, viz.: private debts, and private property in public funds. The character of private property prevails throughout. No property of either government is protected from confiscation or sequestration by the other. This last circumstance merits attention, because it marks the true boundary.

The propriety of the stipulation will be examined under these several aspects: the right to confiscate or sequestrate private debts or private property in public funds, on the ground of reason and principle; the right as depending on the opinions of jurists and on usage; the policy and expediency of the practice; the analogy of the stipulation with stipulations in our other treaties, and in treaties between other nations.

First, as to the right on the ground of reason and principle.

The general proposition on which it is supported is this: "That every individual of a nation with whom we are at war, wheresoever he may be, is our enemy, and his property of every kind, in every place, liable to capture by right of war."

The only exception admitted to this rule respects property within the jurisdiction of a neutral state; but the exception is referred to the right of the neutral

nation, not to any privilege which the situation gives to the enemy proprietor.

Reason, if consulted, will suggest another exception. This regards all such property as the laws of a country permit foreigners to acquire within it or to bring into it. The right of holding or having property in a country always implies a duty on the part of its government to protect that property, and to secure to the owner the full enjoyment of it. Whenever, therefore, a government grants permission to foreigners to acquire property within its territories, or to bring and deposit it there, it tacitly promises protection and security. It must be understood to engage that the foreign proprietor, as to what he shall have acquired or deposited, shall enjoy the rights, privileges, and immunities of a native proprietor, without any other exceptions than those which the established laws may have previously declared. How can any thing else be understood? Every state, when it has entered into no contrary engagement, is free to permit or not to permit foreigners to acquire or bring property within its jurisdiction; but if it grant the right, what is there to make the tenure of the foreigner different from that of the native, if antecedent laws have not pronounced a difference? Property, as it exists in civilized society, if not a creature of, is, at least, regulated and defined by, the laws, They prescribe the manner in which it shall be used. alienated, or transmitted; the conditions on which it may be held, preserved, or forfeited. It is to them we are to look for its rights, limitations, and conditions. No condition of enjoyment, no cause of forfeiture, which they have not specified, can be presumed to

exist. An extraordinary discretion to resume or take away the thing, without any personal fault of the proprietor, is inconsistent with the notion of property. This seems always to imply a contract between the society and the individual, that he shall retain and be protected in the possession and use of his property so long as he shall observe and perform the conditions which the laws have annexed to the tenure. It is neither natural nor equitable to consider him as subject to be deprived of it for a cause foreign to himself; still less for one which may depend on the volition or pleasure, even of the very government to whose protection it has been confided; for the proposition which affirms the right to confiscate or sequester does not distinguish between offensive or defensive war; between a war of ambition on the part of the power which exercises the right, or a war of self-preservation against the assaults of another.

The property of a foreigner placed in another country, by permission of its laws, may justly be regarded as a deposit, of which the society is the trustee. How can it be reconciled with the idea of a trust, to take the property from its owner, when he has personally given no cause for the deprivation?

Suppose two families in a state of nature, and that a member of one of them had, by permission of the head of the other, placed in his custody some article belonging to himself; and suppose a quarrel to ensue between the two heads of families, in which the member had not participated by his immediate counsel or consent—would not natural equity declare the seizure and confiscation of the deposited property to be an act of perfidious rapacity?

Again—suppose two neighboring nations, which had not had intercourse with each other, and one of them opens its ports and territories for the purpose of commerce, to the citizens of the other, proclaiming free and safe ingress and egress—suppose afterward a war to break out between the two nations, and the one which had granted that permission to seize and convert to its own use the goods and credits of the merchants of the other, within its dominion. What sentence would natural reason, unwarped by particular dogmas, pronounce on such conduct? If we abstract ourselves from extraneous impressions, and consult a moral feeling, we shall not doubt that the sentence would inflict all the opprobium and infamy of violated faith.

Nor can we distinguish either case, in principle, from that which constantly takes place between nations, that permit a commercial intercourse with each other, whether with or without national compact. They equally grant a right to bring into and carry out of their territories the property which is the subject of the intercourse, a right of free and secure ingress and egress; and in doing this they make their territories a sanctuary or asylum, which ought to be inviolable, and which the spirit of plunder only could have ever violated.

There is no parity between the case of the persons and goods of enemies found in our own country and that of the persons and goods of enemies found elsewhere. In the former there is a reliance upon our hospitality and justice; there is an express or implied safe conduct; the individuals and their property are in the custody of our faith; they have no power to resist our will; they can lawfully make no defence

against our violence; they are deemed to owe a temporary allegiance; and for endeavoring resistance would be punished as criminals, a character inconsistent with that of an enemy. To make them a prey is, therefore, to infringe every rule of generosity and equity; it is to add cowardice to treachery. In the latter case there is no confidence whatever reposed in us; no claim upon our hospitality, justice, or good faith; there is the simple character of enemy, with entire liberty to oppose force to force. The right of war consequently to attack and seize,—whether to obtain indemnification for any injury received—to disable our enemy from doing us further harm, to force him to reasonable terms of accommodation, or to repress an overbearing ambition, exists in full vigor, unrestrained and unqualified by any trust or duty on our part. In pursuing it, though we may inflict hardship, we do not commit injustice.

Moreover, the property of the foreigner within our country may be regarded as having paid a valuable consideration for its protection and exemption from forfeiture; that which is brought in, commonly enriches the revenue by a duty of entry. All that is within our territory, whether acquired there or brought there, is liable to contributions to the treasury, in common with other similar property. Does there not result an obligation to protect that which contributes to the expense of its protection? Will justice sanction, upon the breaking out of a war, the confiscation of a property, which, during peace, serves to augment the resources and nourish the prosperity of a state?

The principle of the proposition gives an equal right

to subject the person as the property of the foreigner to the rigors of war. But what would be thought of a government which should seize all the subjects of its enemy found within its territory, and commit them to durance, as prisoners of war? Would not all agree that it had violated an asylum which ought to have been sacred? That it had trampled upon the laws of hospitality and civilization? That it had disgraced itself by an act of cruelty and barbarism? * Why would it not be equally reprehensible to violate the asylum which had been given to the property of those foreigners?

Reason, left to its own lights, would answer all these questions in one way, and severely condemn the molestation, on account of a national contest, as well of the property as person of a foreigner found in our country, under the license and guaranty of the laws of previous amity.

The case of property in the public funds is still stronger than that of private debts. To all the sanctions which apply to the latter, it adds that of an express pledge of the public faith to the foreign holder of stock.

The constituting of a public debt or fund, transferable without limitation or distinction, amounts to a promise to all the world, that whoever, foreigner or citizen, may acquire a title to it, shall enjoy the benefit of what is stipulated. Every transferee becomes, by the act of transfer, the immediate proprietor of the promise. It inures directly to his use, and the foreign promisee no more than the native, can be deprived of that benefit,

* All that can rightfully be done is to oblige the foreigners, who are subjects of our enemy, to quit our country.

except in consequence of some act of his own, without the infraction of a positive engagement.

Public debt has been truly defined, "*A property subsisting in the faith of government.*" Its essence is promise. To confiscate or sequester it is emphatically to rescind the promise given, to revoke the faith plighted. It is impossible to separate the two ideas of a breach of faith, and the confiscation or sequestration of a property subsisting only in the faith of the government by which it is made.

When it is considered that the promise made to the foreigner is not made to him in the capacity of member of another society, but in that of citizen of the world, or of an individual in the state of nature, the infraction of it towards him, on account of the fault, real or pretended, of the society to which he belongs, is the more obviously destitute of color. There is no real affinity between the motive and the consequence. There is a confounding of relations. The obligation of a contract can only be avoided by the breach of a condition express or implied, which appears or can be presumed to have been within the contemplation of both parties, or by the personal fault or crime of him to whom it is to be performed. Can it be supposed that a citizen of one country would lend his money to the government of another, in the expectation that a war between the two countries, which, without or against their will, might break out the next day, could be deemed a sufficient cause of forfeiture?

The principle may be tested in another way. Suppose one government indebted to another in a certain sum of money, and suppose the creditor government

to borrow of the citizen of the other an equal sum of money. When he came to demand payment, would justice, would good faith, permit the opposing to his claim, by way of set-off, the debt due from his government? Who would not revolt at such an attempt? Could not the individual creditor answer with conclusive force, that in a *matter of contract* he was not responsible for the society of which he was a member, and that the debts of the society were not a proper set-off against his private claim?

With what greater reason could his claim be refused on account of an injury, which was a cause of war, received from his sovereign, and which had created on the part of the sovereign a debt of reparation? It were certainly more natural and just to set off a debt due by contract to the citizen of a foreign country against a debt due by contract from the sovereign of that country, than to set it off against a vague claim of indemnification for an injury or an aggression of which we complain, and of which the reality or justice is seldom undisputed on the other side.

The true rule which results from what has been said, and which reason sanctions with regard to the right of capture, is this: "It may be exercised everywhere *except within a neutral jurisdiction* * *or where the property is under the protection of our own laws*"; and it may perhaps be added that it always supposes the possibility of *rightful* combat, of attack, and defence.

These exceptions involve no refinement; they depend on obvious considerations, and are agreeable to

* There are exceptions to this exception; but they depend on special circumstances, which admit the principal exception, and need not be particularized.

common sense and to nature; the spontaneous feelings of equity accord with them. It is, indeed, astonishing that a contrary rule should ever have been countenanced by the opinion of any jurist, or by the practice of any civilized nation.

We shall see in the next number how far either has been the case, and what influence it ought to have upon the question.

CAMILLUS.

NO. XX.

1795.

The point next to be examined is the right of confiscation or sequestration, as depending on the opinions of jurists and on usage.

To understand how far these ought to weigh, it is requisite to consider what are the elements or ingredients which compose what is called the law of nations.

The constituent parts of this system are: 1. The *necessary* or internal law, which is the *law of nature* applied to nations; or that system of rules for regulating the conduct of nation to nation, which reason deduces from the principles of natural right, as relative to political societies or states. 2. The *voluntary* law, which is a system of rules resulting from the equality and independence of nations, and which, in the administration of their affairs, and the pursuit of their pretensions, proceeding on the principle of their having no common judge upon earth, attributes equal validity, as to external effects, to the measures or conduct of one as of another, without regard to the intrinsic justice of those measures or that conduct. Thus captures, in war, are as valid, when made by the party in

the wrong, as by the party in the right. 3. The *pactitious* or *conventional* law, or that law which results from a treaty between two or more nations. This is evidently a particular, not a general law, since a treaty or pact can only bind the contracting parties; yet, when we find a provision universally pervading the treaties between nations, for a length of time, as a kind of formula, it is high evidence of the general law of nations. 4. The customary law, which consists of those rules of conduct, that, in practice, are respected and observed among nations. Its authority depends on usage, implying a tacit consent and agreement. This also is a particular, not a general law, obligatory only on those nations whose acquiescence has appeared, or, from circumstances, may fairly be presumed. Thus, the customary law of Europe may not be that of a different quarter of the globe. The three last branches are sometimes aggregately denominated the *positive* law of nations.

The two first are discoverable by reason; the two last depend on proof, as matters of fact. Hence the opinion of jurists, though weighing, as the sentiments of judicious or learned men, who have made the subject a particular study, are not conclusive, as authorities. In regard to the *necessary* and *voluntary* law, especially, they may be freely disregarded, unless they are found to be adopted and sanctioned by the practice of nations. For where REASON is the guide, it cannot properly be renounced for mere OPINION, however respectable. As witnesses of the customary laws, their testimony, the result of careful researches, is more particularly entitled to attention.

If, then, it has been satisfactorily proved, as the dictate of sound reason, that private debts, and private property in public funds, are not justly liable to confiscation or sequestration, an opposite opinion of one or more jurists could not control the conclusion in point of principle. So far as it may attest a practice of nations, which may have introduced a positive law on the subject, the consideration may be different. It will then remain to examine, upon their own and other testimony, whether that practice be so general as to be capable of varying a rule of reason, by the force of usage; and whether it still continues to bear the same character, or has been weakened or done away by some recent or more modern usage.

I will not avail myself of a position, advanced by some writers, that usage, if derogating from the principles of natural justice, is null, further than to draw this inference: that a rule of right, deducible from them, cannot be deemed to be altered by usage, partially contradicted, fluctuating.

With these guides, our further inquiries will serve to confirm us in the negative of the pretended right to confiscate or sequester in the cases supposed.

The notion of this right is evidently derived from the Roman law. It is seen there, in this peculiar form: "Those things of an enemy which are among us, belong not to the state, but to the first occupant," * which seems to mean, that the things of an enemy, at the commencement of the war, found in our country, may be seized by any citizen, and will belong to him who first gets possession. It is known that the maxims of

* Digest. XLI., tit. I.: "Et quæ res hostiles apud nos," etc.

the Roman law are extensively incorporated into the different codes of Europe; and particularly, that the writers on the law of nations have borrowed liberally from them. This source of the notion does not stamp it with much authority. The history of Rome proves that war and conquest were the great business of that people, and that, for the most part, commerce was little cultivated. Hence it was natural that the rights of war should be carried to an extreme, unmitigated by the softening and humanizing influence of commerce. Indeed the world was yet too young—moral science too much in its cradle—to render the Roman jurisprudence a proper model for implicit imitation; accordingly, in this very particular of the rights of war, it seems to have been equally a rule of the Roman law, "That those who go into a foreign country in the time of peace, if war is suddenly kindled, are made the slaves of those among whom, now become enemies by ill fortune, they are apprehended." * This right of capturing the property and of making slaves of the persons of enemies is referred, as we learn from *Cicero*, to the right of killing them; which was regarded as absolute and unqualified, extending even to women and children. Thus it would seem that, on the principle of the Roman law, we might rightfully kill a foreigner who had come into our country during peace, and was there at the breaking out of war with his country. Can there be a position more horrible, more detestable?

The improvement of moral science in modern times, restrains the right of killing an enemy to the time of

* "In pace qui pervenerunt ad alteros, si bellum subito exarcisset, eorum servi efficiuntur, apud quos jam hostes suo facto deprehenduntur." Digest., lib. XLIX., tit. XV., l. XII.

battle or resistance, except by way of punishment for some enormous breach of the law of nations, or for self-preservation, in case of immediate and urgent danger; and rejects altogether the right of imposing slavery on captives.

Why should there have been a hesitation to reject other odious consequences of so exceptionable a principle? What respect is due to maxims which have so inhuman a foundation?

And yet a deference for those maxims has misled writers who have professionally undertaken to teach the principles of national ethics; and the spirit of rapine has continued, to a late period, to consecrate the relics of ancient barbarism with too many precedents of imitation. Else it would not now be a question with any, "Whether the person or property of a foreigner, being in our country with permission of the laws of peace, could be liable to molestation or injury by the laws of war, merely on account of the war?"

Turning from the ancients to the moderns, we find, that the learned Grotius quotes and adopts, as the basis of his opinions, the rules of the Roman law; though he, in several particulars, qualifies them, by the humane innovations of later times.

On the very question of the right to confiscate or sequester private debts, his opinion, as far as it appears, seems to be at variance with his premises, steering a kind of middle course. His expressions (L. III., C. XX., Sec. 16.) are these: "Those debts which are due to private persons, at the beginning of the war, are not to be accounted forgiven (that is, when peace is made); for these are not acquired by the right of war,

but only *forbidden to be demanded* in time of war; therefore, the *impediment* being removed, that is, the war ended, they retain their full force." His idea appears from this passage to be, that the right of war is limited to the arresting of the payment of private debts during its continuance, and not to the confiscation or annihilation of the debt. Nor is it clear, whether he means, that this arrestation is to be produced by a special act of prohibition, or by the operation of some rule of law, which denies to an alien enemy a right of action. This feeble and heterogeneous opinion may be conceived to have proceeded from a conflict between a respect for ancient maxims, and the impression of more enlightened views, inculcated by the principles of commerce and civilization.

Bynkershoeck is more consistent. Adopting, with Grotius, the rule of the Roman law in its full vigor, he is not frightened at the consequences, but follows them throughout. Hence he bestows a chapter upon the defence of the proposition, quoted in a former number, to wit: that * "Since it is the condition of war, that enemies may, with full right, be despoiled and proscribed, it is reasonable that whatsoever things of an enemy are found among his enemies, should change their owner and go to the treasury"; and in several places he expressly implies the rule to *things in action*, or debts and credits, as well as to things in possession.

In confirmation of his doctrine, he adduces a variety of examples, which embrace a period of something more than a century, beginning in the year 1556, and

* Quæstionum Juris Public. liber I., caput VII.: "Cum ea sit belli conditio ut hostes sint omni jure spoliati proscriptique, rationis est quascumque res hostium apud hostes inventas, dominum mutare et fisco cedere."

ending in the year 1657, and which comprehends, as actors on the principle which he espouses, France, Spain, the States General, Denmark, the bishops of Cologne and Munster. But he acknowledges that the right has been questioned; and notes particularly, that when the king of France and the bishops of Munster and Cologne, in the year 1563, confiscated the debts which their subjects owed to the confederate Belgians, the States General, by an edict of the 6th of July, of that year, censured the proceeding, and decreed that those debts could not be paid but to the true creditors; and that the exaction of them, whether by force or with consent, was not to be esteemed valid.

If from the great pains which appear to have been taken by this learned writer, to collect examples in proof of his doctrine, we are to conclude that the collection is tolerably complete, we are warranted in drawing this inference: that he has not cured any defect, which reason may discern in his principles, by any thing like the evidence of such a general, uniform, and continued usage, as is requisite to introduce *a rule* of the positive law of nations, in derogation from the natural.

A minority only of the powers of Europe are shown to have been implicated in the practice; and among the majority, not included, are several of the most considerable and respectable. One of these, Great Britain, is represented as having acquiesced in it, in the treaties of peace, between her and some of the powers who went into the practice, to her detriment, by relinquishing the claim of restitution. But war must, at length, end in peace; and the sacrifice a nation makes to the

latter is a slight argument of her consent to the principle of the injuries which she may have sustained. I have not been able to trace a single instance in which Great Britain has, herself, set the example of such a practice; nor could she do it, as has elsewhere appeared, without contravening an article of Magna Charta, unless by way of reprisal for the same thing done towards her. The suggestion of an instance in the present war with France, will, hereafter, be examined. In such a question, the practice of a nation, which has, for ages, figured preëminently in the commercial world, is entitled to particular notice.

It is not unworthy of remark, that the common law of England, from its earliest dawnings, contradicted the rule of the Roman law. It exempted from seizure, by a subject of England, the property of a foreigner brought there before a war; but gave to the first seizer, or occupant, the property which came there after the breaking out of a war. The noble principles of the common law cannot cease to engage our respect, while we have before our eyes so many monuments of their excellence in our own jurisdiction.

It also merits to be dwelt upon, that the United Netherlands, for some time the first, and long only the second in commercial consequence, formally disputed the right, and condemned the practice of confiscating private debts, though themselves, in some instances, guilty of it.

And it is likewise a material circumstance, that Bynkershoeck, who seems to have written in the year 1737, does not adduce any precedent later than the year 1667, seventy years before his publication.

The subsequent period will, it is believed, be found upon strict inquiry, equally barren of similar precedents. The exceptions are so few,* that we may fairly assert, that there is the negative usage of near a century and a half, against the pretended right. This negative usage of a period the most enlightened as well as the most commercial in the annals of the world, is of the highest authority. The former usage, as being partial and with numerous exceptions, was insufficient to establish a rule. The contrary usage, or the renunciation of the former usage, as being general, as attended with few or no exceptions, is sufficient even to work a change in the rigor of an ancient rule, if it could be supposed to have been established. Much more is it sufficient to confirm and enforce the lesson of reason, and to dissipate the clouds which error, and some scattered instances of violence and rapine, may have produced.

Of the theoretical writers whom I had an opportunity of consulting, Vatel is the only remaining one who directly treats the point. His opinion has been said to favor the right to confiscate and sequester. But when carefully analyzed, it will add to the proofs of the levity with which the opposers of the treaty make assertions.

After stating, among other things, that "war gives the same right over any sum of money due by a neutral nation to our enemy, as it can give over his other goods," he proceeds thus: "When Alexander, by conquest, became absolute master of Thebes, he remitted to the Thessalians, a hundred talents, which

* The case of Prussia and the Silesia loan, is the only one I have found.

they owed to the Thebans. The sovereign has naturally the same right over what his subjects may be indebted to his enemies; therefore he may confiscate debts of this nature, if the term of payment happen in the time of war; or, at least, he may prohibit his subjects from paying, while the war lasts. But at present, in regard to the advantages and safety of commerce, all the sovereigns of Europe have departed from this rigor. And as this custom has been generally received, he who should act contrary to it, would injure the public faith; for strangers trusted his subjects only from a firm persuasion that the general custom would be observed. The State does not so much as touch the sums which it owes to the enemy. Everywhere in case of a war, funds credited to the public, are exempt from confiscation and seizure." *

The first proposition of the above passage amounts to this: that "a sovereign *naturally*, that is, according to the law of nature, may confiscate debts, which his subjects owe to his enemies, if the term of payment happen in the time of war—or, at least, he may prohibit his subjects from paying while the war lasts."

So far as this goes it agrèes with the principle which I combat, that there is a natural right to confiscate or sequester private debts in time of war; so far Vatel accords with the Roman law and with Bynkershoeck.

But he annexes a whimsical limitation: "If the term is the time of war"—and there is a marked uncertainty and hesitation—"the sovereign may confiscate, or, at least, he may prohibit his subjects from paying while the war lasts." It is evident that the circumstance of the

* Book III., Chap. V., Sec. 77.

time of payment can have no influence upon the right. If it reaches to confiscation, which takes away the substance of the thing, the mere incident of the happening of payment must be immaterial. If it is confined to the arresting of payment during the war, the reason of the rule, the object being to prevent supplies going to the enemy, will apply it as well to debts which had become payable before the war, as to those which became payable in the war. Whence this inaccuracy in so accurate a thinker? Whence the hesitation about so important a point, as whether the pretended right extends to confiscation or simply to sequestration? They must be accounted for, as in another case, by the conflict between respect for ancient maxims and the impressions of juster views, seconded by the more enlightened policy of modern times.

But while Vatel thus countenances, in the first part of the passage, the opinion that the natural law of nations authorizes the confiscation or sequestration of private debts, in what immediately follows he most explicitly and unequivocally informs us that the rule of that law in this respect has been abrogated by modern usage or custom; in other words, that the modern customary law has changed in this particular the ancient natural law. Let his own words be consulted: "At present," says he, "in regard to the advantage and safety of commerce, all the sovereigns of Europe have departed from this rigor; and as this custom has been generally received, he who would act contrary to it would injure the public faith; for strangers trusted his subjects only from the firm persuasion that the general custom would be observed."

This testimony is full, that there is a general custom received and adopted by all the sovereigns of Europe, which obviates the rigor of the ancient rule; the non-observance of which custom would violate the public faith of a nation, as being a breach of an implied contract, by virtue of the custom, upon the strength of which foreigners trust his subjects.

Language cannot describe more clearly a rule of the customary law of nations, the essence of which, we have seen, is general usage, implying a tacit agreement to conform to the rule. The one alleged is denominated a custom generally received, a general custom; all the sovereigns of Europe are stated to be parties to it, and it is represented as obligatory on the public faith, since this would be injured by a departure from it.

The consequence is that if the right pretended did exist by the natural law, it has given way to the customary law; for it is a contradiction, to call that a right which cannot be exercised without breach of faith. The result is, that by the present customary law of nations, within the sphere of its action, there is no right to confiscate or sequester private debts in time of war. The reason or motive of which law is the advantage and safety of commerce.

As to private property in public funds, the right to meddle with them is still more emphatically negatived. "That state does not *so much as touch* the sums it owes to the enemy. *Everywhere*, in case of a war, funds credited to the public are exempt from confiscation and seizure." These terms manifestly exclude sequestration as well as confiscation.

In another place, the author gives the reason of this

position, Book II., Chap. XVIII. "In reprisals, the goods of a subject are seized in the same manner as those of the state or the sovereign. Every thing that belongs to the nation is liable to reprisals as soon as it can be seized, *provided it be not a deposit trusted to the public faith.* This DEPOSIT is found in our hands, only in consequence of that *confidence*, which the proprietor has put in our good faith, and it ought to be respected, even in case of open war. Thus it is usual to behave in France, England, and elsewhere, with respect to the money which foreigners have placed in the public funds." The same principle, if he had reflected without bias, would have taught him, that reprisals could rightfully extend to nothing that had been committed with their permission, to the custody and guardianship of our laws, during a state of peace; and, consequently, that no property of our enemy which was in our country before the breaking out of the war, is justly liable to them. For is not all such property *equally a deposit trusted to the public faith?* What foreigner would acquire property in our country, or bring and lodge it there, but in the *confidence*, that in case of war, it would not become an object of reprisals? Why then resort to custom for a denial of the right to confiscate or sequester private debts? Why not trace it to the natural injustice and perfidy of taking away in war what a foreigner is permitted to own and have among us in peace? Why ever consider that as a natural right which was contrary to good faith tacitly pledged? This is evidently the effect of too much deference to ferocious maxims of antiquity, of undue complaisance to some precedents of modern rapacity.

He had avoided the error by weighing maturely the consequences of his own principle in another case: "He who declares war (says he) does not confiscate the *immovable* goods possessed in his country by his enemy's subjects. *In permitting them to purchase and possess those goods*, he has, in this respect, admitted them into the number of his subjects,"—that is, he has admitted them to a like privilege with his subjects, as to the real property they were permitted to acquire and hold. But why should a less privilege attend the license to purchase, possess, or have other kinds of property in his country? The reason, which is the permission of the sovereign, must extend to the protection of one kind of property as well as another, if the permission extends to both.

Vatel advances in this and in the passage quoted immediately before it, the true principles which ought to govern the question—though he does not pursue them into their consequences; else he would not have deduced the exemption of private debts, from confiscation or sequestration, from the customary law of nations, but would have traced it to the natural or necessary law, as founded upon the obligations of good faith; upon the tacit promise of security connected with the permission to acquire property within, or bring property into, our country; upon the protection which every government owes to a property of which it legalizes the acquisition, or the deposit within its jurisdiction; and in case of *immovable* goods or real estate, of which he admits a right to sequester the *income*, to prevent its being remitted to the enemy, he would have perceived the necessity of leaving this

effect to be produced by the obstructions intrinsically incident to a state of war,—since there is no reason why the income should be less privileged than the substance of the thing.

It appears, then, that the doctrine of Vatel, collectively taken, amounts to this: that there is a natural right of war in certain cases to confiscate or sequester enemy's property found within our country; but that, on motives relative to commerce and public credit, the customary law of Europe has restrained that right, as to *private debts*, and *private property*, in public funds. His opinion, therefore, favors the principle of the article of the treaty under examination, as consonant with the present European law of nations; and it is an opinion of greater weight than any that can be cited, as well as on account of the capacity, diligence, information, and the precision of ideas, which characterize the work in which it is contained, as on account of the recency of that work.*

A question may be raised—Does this customary law of nations, as established in Europe, bind the United States? An affirmative answer to this is warranted by conclusive reasons.

1. The United States, when a member of the British Empire, were, in this capacity, a party to that law, and not having dissented from it, when they became independent, they are to be considered as having continued a party to it. 2. The common law of England, which was and is in force in each of these States, adopts the law of nations, the positive equally with the natural, as a part of itself. 3. Ever since we have been an inde-

* It appears to have been written about the year 1760.

pendent nation, we have appealed to and acted upon the *modern* law of nations as understood in Europe—various resolutions of Congress during our revolution, the correspondence of executive officers, the decisions of our courts of admiralty, all recognized this standard. 4. Executive and legislative acts, and the proceedings of our courts, under the present government, speak a similar language. The President's proclamation of neutrality, refers expressly to the *modern* law of nations, which must necessarily be understood as that prevailing in Europe, and acceded to by this country; and the general voice of our nation, together with the very arguments used against the treaty, accord in the same point. It is indubitable, that the customary law of European nations is as a part of the common law, and, by adoption, that of the United States.

But let it not be forgotten, that I derive the vindication of the article from a higher source, from the natural or necessary law of nature—from the eternal principles of morality and good faith.

There is one more authority which I shall cite in reference to a part of the question, property in the public funds. It is a report to the British king in the year 1753, from Sir George Lee, judge of the prerogative court, Dr. Paul, advocate-general in the courts of civil law, Sir Dudley Rider and Mr. Murray, attorney- and solicitor-general,* on the subject of the Silesia loan, sequestered by the king of Prussia, by way of reprisal, for the capture and condemnation of some

* Sir George Lee, was afterward the very celebrated Chief Justice Lee, and Mr. Murray was the late Lord Mansfield.

Prussian vessels. This report merits all the respect which can be derived from consummate knowledge and ability in the reporters; but it would lose much of its weight from the want of impartiality, which might fairly be imputed to the officers of one of the governments interested in the contest, had it not since received the confirming eulogies of impartial and celebrated foreign writers. Among these, Vatel calls it an excellent piece on the law of nations.

The following is an extract: "The king of Prussia has pledged his royal word to pay the Silesia debt to *private men.* It is negotiable, and many parts of it have been assigned to the subjects of other powers. It will not be easy *to find an instance,* where a prince has thought fit to make reprisals upon *a debt due from himself to private men.* There is a *confidence that this will not be done.* A private man lends money to a prince upon an *engagement of honor; because a prince cannot be compelled, like other men, in an adversary way, by a court of justice.* So scrupulously did England and France adhere to this *public faith,* that even during the war, they suffered no inquiry to be made, whether any part of the public debt was due to the subjects of the enemy, though it is certain many English had money in the French funds, and many French had money in ours."

The universal obligation of good faith is here reinforced on a special ground, by the *point of honor;* to confirm the position that money which a sovereign or State owes to private men, is not a proper object of reprisals.

This case of the Silesia debt is the only example, within the present century, prior to the existing war,

which I have been able to trace, violating the immunity of private debts, or private property, in public funds. It is a precedent that can have little weight, not only from singularity, but from the character of its author. Frederick was a consummate general, a profound statesman ; but he was very far from being a severe moralist. This is not the only instance in which he tarnished his faith ; and the friends of his fame must regret that he could not plead on the occasion those mighty and dazzling reasons of state, which are the specious apologies for his other aberrations.

It is asserted that the present war of Europe affords examples of the practice, which I reprobate, and that Great Britain herself has given one. The present war of Europe is of so extraordinary a complexion, and has been conducted, in all respects, upon such extraordinary principles, that it may truly be regarded as an exception to all general rules, as a precedent for nothing. It is rather a beacon, warning mankind to shun the pernicious examples which it sets, than a model inviting to imitation. The human passions, on all sides, appear to have been wrought up to a pitch of frenzy, which has set reason, justice, and humanity at defiance.

Those who have nevertheless thought fit to appeal to the examples of this very anomalous war, have not detailed to us the precise nature or course of the transactions to which they refer ; nor do I know that sufficient documents have appeared in this country to guide us in the inquiry.

The imperfect evidence which has fallen under my observation, respects France and Great Britain, and seems to exhibit these facts :

France passed a decree sequestering the property of the subjects of the powers at war with her; and in the same or another decree, obliged all those of her citizens, who had moneys owing to them in foreign countries, to draw bills upon their debtors, and to furnish those bills to the Government, by way of loan, or upon certain terms of payment.

The Government of Great Britain, in consequence of this proceeding, passed ten different acts, the objects of which were to prevent the payment of those bills, and to secure the sums due for the benefit of the original creditors. These acts appoint certain commissioners, to whom reports are to be made of all French property in the hands of British subjects, and who are empowered to receive and sell goods and other effects, to collect debts and to deposit the proceeds in the bank of London, or in other safe keeping, if preferred or required by parties interested. The moneys deposited are to be invested in the purchase of public stock, together with the interest or dividends arising from time to time, to be eventually accounted for to the proprietors. The commissioners have, likewise, a discretion, upon demand, to deliver over their effects and moneys to such of the proprietors as do not reside within the French dominions.

I shall not enter into a discussion of the propriety of these acts of Great Britain. It is sufficient to observe that they are attended with circumstances which very essentially discriminate them from the thing for which they were quoted. The act of the French Government was in substance a compulsory assumption of all the property of its citizens in foreign countries. This

extraordinary measure presented two options to the governments of those countries: One to consider the transfer as virtually effected, and to confiscate the property as being no longer that of the individuals, but that of the Government of France; the other, to defeat the effect of her plan by buying up the property for the benefit of the original creditors, in exclusion of the drafts which they were compelled to draw. Great Britain appears to have elected the latter course. If we suppose her sincere in the motive, and there is fairness and fidelity in the execution, the issue will be favorable, rather than detrimental, to the rights of private property.

I have said that there was an option to confiscate. A government may rightfully confiscate the property of an adversary government. No principle of justice or policy occurs to forbid reprisals upon the public or national property of an enemy. That case is foreign, in every view, to the principles which protect private property. The exemption stipulated by the tenth article of the treaty is accordingly restricted to the latter.

It appears that the Government of France, convinced by the effect of the experiment that the sequestration of the property of the subjects of her enemies was impolitic, thought fit to rescind it. Thence on the 29th of December, 1794, the convention decreed as follows:

"The decrees concerning sequestration of the property of the subjects of the powers at war with the republic, are annulled. Such sums as have been paid by French citizens into the treasury, in consequence of those decrees, will be reimbursed."

In the course of the debates upon this decree, it was

declared that the decrees which it was to repeal *had prepared the ruin of commerce*, and had severed, *against the rights of nations*, the *obligations* of merchants in different States. This is a direct admission that the sequestration was contrary to the law of nations.

As far as respects France, then, the precedent, upon the whole, is a strong condemnation of the pretended right to confiscate or sequester. This formal renunciation of the ground which was at first taken, is a very emphatic protest against the principle of the measure. It ought to serve us too as an instructive warning against the employment of so mischievious and disgraceful an expedient. And as to England, as has been shown, the precedent is foreign to the question.

Thus we perceive, that *opinion* and *usage*, far from supporting the right to confiscate or sequester private property, on account of national wars, when referred to the *modern* standard, turn against that right, and coincide with the principle of the article of the treaty under examination.

What remains to be offered will further illustrate its propriety, and reconcile it to all reflecting men.

CAMILLUS.

NO. XXI.

1795.

Since the closing of my last number, I have accidentally turned to a passage of Vatel, which is so pertinent to the immediate subject of that paper, that I cannot refrain from interrupting the progress of the discussion, to quote it; it is in these words (B. III., Ch. IV., Sec. 63): "The sovereign declaring war can

neither detain those *subjects* of the enemy, who are within his dominions at the time of the declaration, *nor their effects.* They came into his country *on the public faith. By permitting them to enter his territories, and continue there he tacitly promised them liberty and security for their return.*" This passage contains, explicitly, the principle which is the general basis of my argument—namely, that the permission to a foreigner to come with his effects into, and acquire others within our country, in time of peace, virtually pledges the public faith for the security of his person and property, in the event of war. How can this be reconciled with the *natural* right (controlled only by the customary law of nations) which this writer admits, to confiscate the debts due by the subjects of a State to its enemies ? I ask once more, can there be a natural right to do that which includes a violation of faith ?

It is plain, to a demonstration, that the rule laid down in this passage, which is so just and perspicuous as to speak conviction to the heart and understanding, unites the natural with the customary law of nations, in a condemnation of the pretension to confiscate or sequester the private property of our enemy, found in our country at the breaking out of a war.

Let us now proceed to examine the policy and expediency of such a pretension.

In this investigation I shall assume, as a basis of argument, the following position : *That it is advantageous to nations to have commerce with each other.*

Commerce, it is manifest, like any other object of enterprise or industry, will prosper in proportion as it is secure. Its security, consequently, promoting its

prosperity, extends its advantages. Security is indeed essential to its having a due and regular course.

The pretension of a right to confiscate or sequester the effects of foreign merchants, in the case in question, is, in its principle, fatal to that necessary security. Its free exercise would destroy external commerce; or, which is nearly the same thing, reduce it within the contracted limits of a game of hazard, where the chance of large profits, accompanied with the great risks, would tempt alone the adventurous and the desperate. Those enterprises, which, from circuitous or long voyages, slowness of sales, incident to the nature of certain commodities, the necessity of credit, or from other causes, demand considerable time for their completion must be renounced. Credit, indeed must be banished from all the operations of foreign commerce; an engine, the importance of which, to its vigorous and successful prosecution, will be doubted by none, who will be guided by experience or observation.

It cannot need amplification, to elucidate the truth of these positions. The storms of war occur so suddenly and so often, as to forbid the supposition, that the merchants of one country would trust their property, to any extent, or for any duration, in another country, which was in the practice of confiscating or sequestering the effects of its enemies, found within its territories, at the commencement of a war. That practice, therefore, would necessarily paralyze and wither the commerce of the country in which it obtained. Accordingly, nations attentive to the cultivation of commerce, which formerly were betrayed, by temporary considerations, into particular instances of that atrocious

practice, have been led, by the experience of its mischiefs, to abstain from it in later times. They saw that to have persisted in it would have been to abandon competition on equal terms, in the lucrative and beneficial field of commerce.

It is no answer to this, to say that the exercise of the right might be ordinarily suspended, though the right itself might be maintained, for extraordinary and great emergencies.

In the first place, as the ordinary forbearance of its exercise would be taken by foreigners for evidence of an intention never to exercise it, by which they would be enticed into large deposits, that would not otherwise have taken place; a departure from the general course would always involve an act of treachery and cruelty.

In the second place, the *possibility* of the occasional exercise of such a right, if conceived to exist, would be, at least, a slow poison, conducing to a sickly habit of commerce; and, in a series of time, would be productive of much more evil than could be counterbalanced by any good which it might be possible to obtain in the contemplated emergency, by the use of the expedient.

Let experience decide. Examples of confiscation and sequestration have been given. When did the dread of them prevent a war? When did it cripple an enemy, so as to disable him from exertion, or force him into a submission to the views of his adversary? When did it even sensibly conspire to either of these ends? If it has ever had any such effect, the evidence of it has not come within my knowledge.

It is true, that between Great Britain and the United States, the expectation of such effects is better warranted than perhaps in any other cases that have existed; because we commonly owe a larger debt to that country, than is usual between nations, and there is a relative state of things, which tend to a continuation of this situation.

But how has the matter operated hitherto? In the late war between the two countries, certain States confiscated the debts due from their citizens to British creditors, and these creditors actually suffered great losses. The British Cabinet must have known that it was possible the same thing might happen in another war, and on a more general scale; yet the appearances were extremely strong, at a particular juncture, that it was their plan, either from ill-will, from the belief that popular opinion would ultimately drag our Government into the war, from the union of these two, or from other causes, to force us into hostilities with them. Hence it appears, that the apprehension of acts of confiscation, or sequestration, was not sufficient to deter from hostile views, or to insure pacific dispositions.

It may be pretended, that the menace of this measure, had a restraining influence on the subsequent conduct of Great Britain. But if we ascribe nothing to the measures which our Government actually pursued, under the pressure of the provocations received, we at least find in the course of European events, a better solution of a change of policy in the Cabinet of Great Britain, than from the dread of a legislative piracy on the debts due to their merchants.

The truth unfortunately is, that the passions of men stifle calculation; that nations the most attentive to pecuniary considerations, easily surrender them to ambition, to jealousy, to anger, or to revenge.

For the same reason, the actual experiment of an exercise of the pretended right, by way of reprisal for an injury complained of, would commonly be as inefficacious as the menace of it to arrest general hostilities. Pride is roused; resentment kindled; and where there is even no previous disposition to those hostilities, the probability is that they follow. Nations, like individuals, ill brook the idea of receding from their pretensions under the rod, or of admitting the justice of an act of retaliation or reprisal by submitting to it. Thus we learn, from the king of Prussia himself, that the sequestration of the Silesia debt, instead of procuring the restoration for which it was designed, was on the point of occasioning an open rupture between him and Great Britain, when the supervention of a quarrel with France diverted the storm, by rendering him necessary as an ally.

Perhaps it may be imagined that the practice of confiscation or sequestration would be more efficacious to wound and disable Great Britain, in case of a war, than to prevent it. But this also is a vain chimera! A nation that can, at pleasure, raise by loan twenty millions sterling, would be in little danger of being disconcerted or enfeebled in her military enterprises by the taking away or arresting of three or four millions due to her merchants. Did it produce distress and disorder among those whom it affected and their connections? If that disorder was sufficient to threaten a

general derangement of mercantile credit, and, with it, of the public finances, the pending war affords an example, that the public purse or credit could be brought successfully into action for the support of the sufferers. Three or four millions of exchequer bills applied in loans would be likely to suffice to prevent the partial evil from growing into a national calamity.

But we forget that, as far as the interruption of the payment of the debts due to her merchants could be supposed to operate upon Great Britain, war itself would essentially answer the purposes of confiscation or sequestration—by interrupting trade and intercourse, it is in fact in a great degree a virtual sequestration. Remittances to any extent become impracticable. There are few ways in which, on account of the state of war, it is lawful to make them ; and debtors are, for the most part, enough disposed to embrace pretexts of procrastination.

The inconvenience of deferred payment would, therefore, be felt by Great Britain, with little mitigation, from the bare existence of war, without the necessity of our Government incurring the discredit and responsibility of a special interference.

Indeed, as far as the dread of eventual loss can operate, it ought in a great measure to have its effect exclusive of the idea of confiscation. Great Britain must want reflection, not to be sensible, that in making war upon us, she makes war upon her own merchants ; by the depredations upon our trade destroying those resources from which they are to be paid. If she be indifferent to this consideration, it will be because she is governed by some motive or passion powerful enough

to dispose her to run the risk of the entire loss—in the reliance of obtaining indemnification by the acquisitions of war, or in the terms of peace.

Will it be said that the seizure of the debts would put in the hands of our Government a valuable resource for carrying on the war? This, upon trial, would prove as fallacious as all the rest. Various inducements would prevent debtors from paying into the Treasury. Some would decline it from conscientious scruples, from a doubt of the rectitude of the thing—others, with intent to make a merit with their creditors of the concealment, and to favor their own future credit and advantage—others, from a desire to retain the money in their own employment; and a great number from the apprehension that the treaty of peace might revive their responsibility to the creditors, with the embarrassment to themselves of getting back, as well as they could, the moneys which they had paid into the Treasury. Of this, our last treaty of peace, in the opinion of able judges, gave an example. These causes and others, which do not as readily occur, would oppose great obstacles to the execution of the measure.

But severe laws, inflicting heavy penalties, might compel it. Experience does not warrant a sanguine reliance upon this expedient, in a case in which great opportunity of concealment is united with strong motives of inclination or interest. It would require an inquisition, justly intolerable to a free people—penalties, which would confound the due proportion between crime and punishment, to detect or to deter from concealment and evasion, and to execute the law. Probably no means less efficacious than a

revolutionary tribunal and a *guillotine* would go near to answer the end. There are but few, I trust, to whom these would be welcome means.

We may conclude, therefore, that the law would be evaded to an extent which would disappoint the expectations from it, as a resource. Some moneys, no doubt, would be collected; but the probability is that the amount would be insignificant, even in the scale of a single campaign. But, should the collection prove as complete as it ordinarily is between debtor and creditor, it would little, if at all, exceed the expense of one campaign.

Hence we perceive that, regarding the measure either as a mean of disabling our enemies, or as a resource to ourselves, its consequence dwindles, upon a close survey; it cannot pretend to a magnitude which would apologize either for a sacrifice of national honor or candor, or for a deviation from the true principles of commerce and credit.

But let us take a further view of its disadvantages.

A nation, in case of war, is under no responsibility for the delinquencies or frauds of its citizens, who are debtors to those of its enemy, if it does not specially interfere with the payment of the debts which they owe. But if it interposes its authority to prevent the payment, it gives a claim of indemnification to its adversary for the intervening losses which those delinquencies or frauds may occasion. Whether, on the making of peace, this would be insisted upon or waived, might depend much on the good or ill success of the war; but every thing which adds to the catalogue of our enemy's just pretensions, especially when

the fortune of war has been pretty equal, is an evil, either as an additional obstacle to speedy peace, or as an ingredient to render the terms of it less advantageous to ourselves. And it is, therefore, unwise in a government to increase the list of such pretensions, by a measure which, without utility to itself, administers to the indolence of negligent, and to the avidity of fraudulent individuals.

Further—Every species of reprisal or annoyance which a power at war employs, contrary to liberality or justice, of doubtful propriety in the estimation of the law of nations, departing from that moderation which, in later times, serves to mitigate the severities of war, by furnishing a pretext or provocation to the other side to resort to extremities, serves to embitter the spirit of hostilities, and to extend its ravages. War is then apt to become more sanguinary, more wasting, and every way more destructive. This is a ground of serious reflection to every nation, both as it regards humanity and policy; to this country it presents itself, accompanied with considerations of peculiar force. A vastly extended sea-coast, overspread with defenceless towns, would offer an abundant prey to an incensed and malignant enemy, having the power to command the sea. The usages of modern war forbid hostilities of this kind; and though they are not always respected, yet, as they are never violated, unless by way of retaliation for a violation of them on the other side, without exciting the reprobation of the impartial part of mankind, sullying the glory and blasting the reputation of the party which disregards them, this consideration has, in general,

force sufficient to induce an observance of them. But the confiscation or sequestration of private debts, or private property in public funds, now generally regarded as an odious and unwarrantable measure, would, as between us and Great Britain, contain a poignant sting. Its effect to exasperate, in an extreme degree, both the nation and government of that country, cannot be doubted. A disposition to retaliate, is a natural consequence; and it would not be difficult for us to be made to suffer beyond any possible degree of advantage to be derived from the occasion of the retaliation. It were much wiser to leave the property of British subjects an untouched pledge for the moderation of its government in the mode of prosecuting the war.

Besides (as, if requisite, might be proved from the records of history), in national controversies, it is of real importance to conciliate the good opinion of mankind; and it is even useful to preserve or gain that of our enemy. The latter facilitates accommodation and peace; the former attracts good offices, friendly interventions, sometimes direct support, from others. The exemplary conduct, in general, of our country, in our contest for independence, was probably not a little serviceable to us in this way; it secured to the intrinsic goodness of our cause every collateral advantage, and gave it a popularity among nations, unalloyed and unimpaired, which even stole into the cabinets of princes. A contrary policy tends to contrary consequences. Though nations, in the main, are governed by what they suppose their interest, he must be imperfectly versed in human nature

who thinks it indifferent whether the maxims of a State tend to excite kind or unkind dispositions in others, or who does not know that these dispositions may insensibly mould or bias the views of self-interest. This were to suppose that rulers only reason—do not feel; in other words, are not men.

Moreover, the measures of war ought ever to look forward to peace. The confiscation or sequestration of the private property of an enemy must always be a point of serious discussion, when interest or necessity leads to negotiations for peace. Unless when absolutely prostrate by the war, restitution is likely to constitute an ultimatum of the suffering party. It must be agreed to, or the war protracted, and at last, it is probable, it must still be agreed to. Should a refusal of restitution prolong the war for only one year, the chance is that more will be lost than was gained by the confiscation. Should it be necessary finally to make it, after prolonging the war, the disadvantage will preponderate in a ratio to the prolongation. Should it be, in the first instance, assented to, what will have been gained? The temporary use of a fund of inconsiderable moment, in the general issue of the war, at the expense of justice, character, credit, and, perhaps, of having sharpened the evils of war. How infinitely preferable to have drawn an equal fund from our own resources, which, with good management, is always practicable! If the restitution includes damages, on account of the interference, for the failures of individuals, the loan will have been the most costly that could have been made. It has been elsewhere observed that our

treaty of peace with Great Britain gives an example of restitution. The late one between France and Prussia gives another. This must become every day more and more a matter of course, because the immunity of mercantile debts becomes every day more and more important to trade, better understood to be so, and more clearly considered as enjoined by the principles of the law of nations.

Thus we see that, in reference to the simple question of war and peace, the measure of confiscation or sequestration is marked with every feature of impolicy.

We have before seen that the pretensions of a right to do the one or the other has a most inimical aspect toward commerce and credit.

Let us resume this view of the subject. The credit which our merchants have been able to obtain abroad, especially in Great Britain, has, from the first settlement of our country to this day, been the animating principle of our foreign commerce. This every merchant knows and feels; and every intelligent merchant is sensible that, for many years to come, the case must continue the same. This, in our situation, is a peculiar reason, of the utmost force, for renouncing the pretension in question.

The exercise of it, or the serious apprehension of its exercise, would necessarily have one of two effects. It would deprive our merchants of the credit, so important to them, or it would oblige them to pay a premium for it, proportioned to the opinion of the risk. Or, to speak more truly, it would combine the two effects; it would cramp credit, and subject what

was given to a high premium. The most obvious and familiar principles of human action establish, that the consideration for money or property, lent or credited, is moderate or otherwise, according to the opinion of security or hazard, and that the quantity of either to be obtained, on loan or credit, is in a great degree contracted or enlarged by the same rule.

Thus should we, in the operations of our trade, pay exorbitantly for a pretension which is of little value, or rather, which is pernicious, even in the relations to which its utility is referred. What folly to cherish it! How much greater the folly ever to think of exercising it! It never can be exercised hereafter, in our country, without great and lasting mischief.

Instead of cherishing so odious a pretension, as "our best, our only weapon of defence," wisdom admonishes us to be eager to cast it from us, as a weapon most dangerous to the wearer, proscribed by the laws of nations, by the laws of honor, and by every principle of sound policy.

Every merchant ought to desire that the most perfect tranquillity on this point, in foreign countries, should facilitate to him, on the best and cheapest terms, the credit for which he has occasion. And every other citizen ought to desire, that he may be thus freed from a continual contribution, in the enhanced price of every imported commodity he consumes, towards defraying the premium which the want of that tranquillity is calculated to generate.

CAMILLUS.

NO. XXII.

1795.

The analogy of the stipulation in the 10th article, with stipulations in our other treaties, and in the treaties between other nations, is the remaining topic of discussion. After this, attention will be paid to such observations, by way of objection to the article, as may not have been before expressly or virtually answered.

The 20th article of our treaty of amity and commerce with France is in these words:

"For the better promoting of commerce, on both sides, it is agreed, that if a war shall break out between the said two nations, six months, after the proclamation of war, shall be allowed to the merchants in the cities and towns where they live, for selling and transporting their goods and merchandises; and if any thing be taken from them or any injury be done them within that term by either party, or the people or subjects of either, full satisfaction shall be made for the same."

The 18th article of our treaty of amity and commerce with the United Netherlands is in these words:

"For the better promoting of commerce, on both sides, it is agreed, that if a war should break out between their high Mightinesses, the States General of the United Netherlands, and the United States of America, there shall always be granted to the subjects on each side, the term of nine months, after the date of the rupture or the proclamation of war, to the end that they may retire with their effects and transport them where they please, which it shall be lawful for

them to do, as well as to sell and transport their effects and goods, with all freedom and without any hindrance, and without being able to proceed, during the said term of nine months, to any arrest of their effects, much less of their persons; on the contrary, there shall be given them, for their vessels and effects which they would carry away, passports and safe conducts for the nearest ports of their respective countries, and for the time necessary for the voyage."

The 22d article of our treaty of amity and commerce with Sweden is in these words:

"In order to favor commerce on both sides as much as possible, it is agreed, that in case war should break out between the two nations, the term of nine months after the declaration of war shall be allowed to the merchants and subjects respectively, on one side and on the other, in order that they may withdraw with their effects and movables, which they shall be at liberty to carry off or to sell where they please, without the least obstacle, nor shall any seize their effects, and much less their persons, during the said nine months; but, on the contrary, passports, which shall be valid for a time necessary for their return, shall be given them for their vessels and the effects which they shall be willing to carry with them, and if any thing is taken from them or any injury is done to them by one of the parties, their people and subjects, during the term above prescribed, full and entire satisfaction shall be made to them on that account."

The 23d article of our treaty of amity and commerce with Prussia contains this provision:

"If war should arise between the two contracting parties, the merchants of either country, then residing in the other, shall be allowed to remain nine months, to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance."

These articles of four, and the only commercial, treaties we had with foreign powers, prior to the pending treaty with Great Britain, though differing in terms, agree in substance, except as to time, which varies from six to nine months. And they clearly amount to this: that upon the breaking out of a war between the contracting parties in each case, there shall be, for a term of six or nine months, full protection and security to the persons and property of the subjects of one which are then in the territories of the other, with liberty to collect their debts,* to sell their goods and merchandises, and to remove, with their effects, wheresoever they please. For this term of six or nine months, there is a complete suspension of the pretended right to confiscate or sequester, giving, or being designed to give, an opportunity to withdraw the whole property which the subjects or citizens of one party have in the country of the other.

The differences between these stipulations and that in the article under examination are chiefly these: The latter is confined to debts, property in the public funds and in public and private banks, without any limitation of the duration of the protection. The former comprehends, in addition, goods and merchan-

* The term "debts" is only expressed in the Prussian treaty, but there are in the other treaties, terms which include debts, and this is the manifest spirit and intent of all.

dises, with a limitation of the protection to a term of six or nine months; but with the intent and supposition that the term allowed may and will be adequate to entire security. The principle, therefore, of all the stipulations is the same; each aims at putting the persons and property of the subjects of one enemy, especially merchants, being within the country of the other enemy at the commencement of a war, out of the reach of confiscation or sequestration.

The persons whose names are to our other treaties, on the part of the United States, are Benjamin Franklin, Silas Deane, Arthur Lee, John Adams, and Thomas Jefferson. The three first are to the treaty with France; Mr. Adams is singly to that with the United Netherlands; Dr. Franklin singly to that with Sweden; and these two, with Mr. Jefferson, are jointly to that with Prussia. The treaty with Sweden was concluded in April, 1783; that with Prussia, in August, 1785. These dates repel the idea, that considerations of policy, relative to the war, might have operated in the case.

We have, consequently, the sanction of all these characters to the principle which governed the stipulation entered into by Mr. Jay; and not only from the ratification of the former treaties at different periods, distant from each other, by different descriptions of men in our public councils, but also from there never having been heard in the community a lisp of murmur against the stipulation, through a period of seventeen years, counting from the date of the treaty with France, there is just ground to infer a coincidence of the public opinion of the country.

I verily believe, that if, in the year 1783, a treaty had been made with England, containing an article similar to the 10th in the present treaty, it would have met with general acquiescence. The spirit of party had not then predisposed men's minds to estimate the propriety of a measure according to the agent, rather than according to its real fitness and quality. What would then have been applauded as wise, liberal, equitable, and expedient, is now, in more instances than one, under the pestilential influence of that baneful spirit, condemned as improvident, impolitic, and dangerous.

Our treaty with Prussia, the 23d article of which has been cited, is indeed a model of liberality, which, for the principles it contains, does honor to the parties, and has been in this country a subject of deserved and unqualified admiration. It contradicts, as if studiously, those principles of restriction and exclusion, which are the foundations of the mercantile and navigating system of Europe. It grants perfect freedom of conscience and worship to the respective subjects and citizens, with no other restraint than that they shall not insult the religion of others. Adopting the rule, that free ships shall make free goods, it extends the protection to the persons as well as to the goods of enemies. Enumerating, as contraband, only "arms, ammunition, and military stores," it even provides that contraband articles shall not be confiscated, but may be taken on the condition of paying for them. It provides against embargoes of vessels and effects. It expressly exempts women, children, scholars of every faculty, cultivators of the

earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, and places, and, in general, all others whose occupations are for the common subsistence and benefit of mankind, their houses, fields, and goods, from molestation in their persons and employments, and from burning, wasting, and destruction, in time of war; and stipulates payment at a reasonable price for what may be necessarily taken from them for military use. It likewise protects from seizure and confiscation, in time of war, vessels employed in trade, and inhibits the granting commissions to private armed vessels, empowering them to take or destroy such trading vessels, or to interrupt their commerce; and it makes a variety of excellent provisions to secure to prisoners of war a humane treatment.

These particulars are stated as evidence of the temper of the day, and of a policy, which then prevailed, to bottom our system with regard to foreign nations upon those grounds of moderation and equity, by which reason, religion, and philosophy had tempered the harsh maxims of more early times. It is painful to observe an effort to make the public opinion, in this respect, retrograde, and to infect our councils with a spirit contrary to these salutary advances toward improvement in true civilization and humanity.

If we pass from our own treaties to those between other nations, we find that the provisions which have been extracted from ours have very nearly become formulas in the conventions of Europe. As examples of this may be consulted the following articles of treaties between Great Britain and other powers (to

wit), the XVIIIth article of a treaty of peace and commerce with Portugal, in 1642; the XXXVIth article of a treaty of peace, commerce, and alliance with Spain, in 1667; the XIXth article of a treaty of peace, and the IId of a treaty of commerce with France, both in 1713; and the XIIth article of a treaty of commerce and navigation with Russia, in 1766.

The article with Portugal provides, that if difficulties and doubts shall arise between the two nations, which give reason to apprehend the interruption of commerce, public notice of it shall be given to the subjects on both sides, and after that notice, two years shall be allowed to carry away the merchandises and goods, and in the meantime there shall be no injury or prejudice done to any person or goods on either side.

The articles with France, in addition to the provisions common in other cases, particularly stipulate, that during the term of the protection (six months) "the subjects on each side shall enjoy good and speedy justice, so that during the said space of six months they may be able to recover their goods and effects, intrusted as well to the public as to private persons."

The article with Russia, besides stipulating an exemption from confiscation for one year, with the privilege to remove and carry away in safety, provides additionally, that the subjects of each party "shall be further permitted, either at or before their departure, to consign the effects which they shall not as yet have disposed of, as well as the debts that shall

be due to them, to such persons as they shall think proper, in order to dispose of them according to their desire and for their benefit; which debts the debtors shall be obliged to pay in the same manner as if no such rupture had happened."

All these articles are, with those of our treaties, analogous in principle, as heretofore particularly explained, to the 10th article of the treaty under discussion. That of the British treaty with France designates expressly debts due from the *public* as well as those due from private persons. That with Russia goes the full length of our 10th article; empowering the creditors on each side to assign the debts which they are not able to collect within the term of their residence, to whomsoever they think fit, for their own benefit, and declaring that these debts shall be paid to the assigns in the same manner as if no rupture had happened.

There is a document extant, which may fairly be supposed to express the sense of the Government of France, at the period to which it relates, of the foundation of these stipulations. It is a memorial of Mr. Bussy, minister from the court of France to that of London, for negotiating peace, dated in the year 1761, and contains these passages: "As it is impracticable for two princes who make war with *each other to agree between them which is the aggressor with regard to the other*,* equity and humanity have

* Thus we find it the sentiment of this minister, that it is *impossible* for two princes who make war with each other, to agree *which is the aggressor with regard to the other*. And yet Mr. Jay was to extort from Great Britain an acknowledgment, that *she was the aggressor with regard to us*, and was guilty of pusillanimity in waiving the question.

dictated these precautions, that where an unforeseen rupture happens suddenly and without any previous declaration, foreign vessels, which, navigating *under the security of peace* and of treaties, happen, at the time of rupture, to be in either of the respective ports, shall have time and full liberty to withdraw themselves.

"This wise provision, so agreeable to the rules of good faith, *constitutes a part of the law of nations*, and the article of the treaty which sanctifies these precautions ought to be faithfully executed, notwithstanding the breach of the other articles of the treaty which is the natural consequence of the war.

"The courts of France and Great Britain used this salutary precaution in the treaties of Utrecht and Aix-la-Chapelle."

These passages place the security stipulated in the treaties for the persons and property of the subjects of one party found in the country of another, at the beginning of a war, upon the footing of *its constituting a part of the law of nations*, which may be considered as a formal diplomatic recognition of the principle for which we contend. As this position was not itself in dispute between the two governments, but merely a collateral inference from it, applicable to vessels *taken at sea*, prior to a declaration of war, it may be regarded as a respectable testimony of the law of nations on the principal point.

If the law of nations confers this exemption from seizure upon vessels which, at the time of the rupture, happen to be in the respective ports of the belligerent

parties, it is evident that it must equally extend its protection to debts contracted in a course of lawful trade. Vessels are particularly mentioned, because the discussion turned upon vessels seized at sea. But the reference to the treaties of Utrecht and Aix-la-Chapelle shows, that the minister, in his observation, had in view the whole subject-matter of the articles of those treaties which provide for the security of merchants and their effects in the event of war.

This conformity in principle, of the article under examination, with the provisions in so many treaties of our own and of other nations, taken in connection with the comment of Mr. Bussy, brings a very powerful support to the article. It is additional and full evidence that our envoy, in agreeing to it, did not go upon new and untrodden ground; that, on the contrary, he was in a beaten track; that, in pursuing the dictates of reason, and the *better opinion* of writers, as to the rule of the law of nations respecting the point, he was, at the same time, pursuing the examples of all the other treaties which we had ourselves made, and of many of those of other countries.

It is now incumbent upon me to perform my promise of replying to such objections to the article as may remain unanswered by the preceding remarks. It is with pleasure I note that the field is very narrow—that, indeed, there scarcely remains any thing which is not so frivolous and impotent as almost to forbid a serious replication. It will therefore be my aim to be brief.

It is said, there is only an apparent reciprocity in

the article, millions being due on our side, and little or nothing on the other.

The answer to this is, that no right being relinquished on either side, no privilege granted, the stipulation amounting only to a recognition of a rule of the law of nations, to a promise to abstain from injustice and a breach of faith, there is no room for an argument about reciprocity further than to require that the promise should be mutual, as is the case. This is the only equivalent which the nature of the subject demands or permits. It would be dishonorable to accept a boon merely for an engagement to fulfil a moral obligation. Indeed, as heretofore intimated, the true rule of reciprocity in stipulations of treaties, is equal right, not equal advantage from each several stipulation.

But it has been shown, that the stipulation will be beneficial to us, by the confidence which it will give on the other side, obviating and avoiding the obstructions to trade, the injuries to and encumbrances upon credit, naturally incident to the distrust and apprehension which, after the question had been once moved, were to be expected. Here, if a compensation were required, there is one. Let me add as a truth—which, perhaps, has no exception, however uncongenial with the fashionable patriotic creed—that, in the wise order of Providence, nations, in a temporal sense, may safely trust the maxim, that the observance of justice carries with it its own and a full reward.

It is also said that, having bound ourselves by treaty, we shall hereafter lose the credit of modera-

tion, which would attend a forbearance to exercise the right. But it having been demonstrated that no such right exists, we only renounce a claim to the negative merit of not committing injustice, and we acquire the positive praise of exhibiting a willingness to renounce explicitly a pretension which might be the instrument of oppression and fraud. It is always honorable to give proof of upright intention.

It is further said, that under the protection of this stipulation the king of Great Britain, who has already *speculated in our funds* (the assertors would be puzzled to bring proof of the fact), may engross the whole capital of the Bank of the United States, and thereby secure the uncontrolled direction of it; that he may hold the stock in the name of the ambassador, or of some citizen of the United States, perhaps a Senator, who, if of the virtuous twenty,* might be proud of the honor; that thus our citizens, in time of peace, might experience the mortification of being beholden to British directors for the accommodations they might want; that, in time of war, our operations might be cramped at the pleasure of his Majesty, and according as he should see fit or not to accommodate our Government with loans; and that both in peace and war we may be reduced to the abject condition of having the whole capital of our national bank administered by his Britannic Majesty.

Shall I treat this rhapsody with seriousness or ridicule?

The capital of the Bank of the United States is ten millions of dollars, little short, at the present market

* Those who advised to a ratification of the treaty.

price, of three millions of pounds sterling; but, from the natural operation of such a demand, in raising the price, it is not probable that much less than four millions sterling would suffice to complete the monopoly. I have never understood, that the private purse of his Britannic Majesty, if it be true, as asserted, that he has already witnessed a relish for speculation in our funds (a fact, however, from which it was natural to infer a more pacific disposition toward us), was so very ample as conveniently to spare an item of such size for a speculation across the Atlantic. But, perhaps, the national purse will be brought to his aid. As this supposes a parliamentary grant, new taxes, and new loans, it does not seem to be a very manageable thing, without disclosure of the object; and, if disclosed, so very unexampled an attempt of a foreign government would present a case completely out of the reach of all ordinary rules, justifying, by the manifest danger to us, even war and the confiscation of all that had been purchased. For let it be remembered, that the article does not protect the public property of a foreign government, prince, or state, independent of the observation just made, that such a case would be without the reach of ordinary rules. It may be added, that an attempt of this kind, from the force of the pecuniary capital of Great Britain, would, as a precedent, threaten and alarm all nations. Would consequences like these be incurred?

But let it be supposed that the inclination shall exist, and that all difficulties about funds have been surmounted—still, to effect the plan, there must be,

in all the stockholders, a willingness to sell to the British king or his agents, as well as the will and means, on his part, to purchase. Here, too, some impediments might be experienced ; there are persons who might choose to keep their property in the shape of bank stock, and live upon the income of it, whom price would not readily tempt to part with it. Besides, there is an additional obstacle to complete success,— the United States are themselves the proprietors of two millions of the bank stock.

Of two things, one, either the monopoly of his Britannic Majesty would be known (and it would be a pretty arduous task to keep it a secret, especially if the stock was to stand, as suggested, in the name of his ambassador), or it would be unknown and concealed under unsuspected names. In the former supposition, the observations already made recur. There would be no protection to it from the article ; and the extraordinary nature of the case would warrant any thing. Would his Majesty or the Parliament choose to trust so large a property in so perilous a situation ?

If, to avoid this, the plan should be to keep the operation unknown, the most effectual method would be to place the stock in the names of our own citizens. This, it seems, would be attended with no difficulty, since even our Senators would be ambitious of the honor ; and if they should have qualms and fears, others more compliant could, no doubt, be found amongst the numerous sectaries or adherents of Great Britain in our country ; probably some of the patriots would not be inexorable, if properly solicited. Or, in

the last resort, persons might be sent from Great Britain to acquire naturalization for the express purpose.

In this supposition, too, the article would be at the least innocent. For its provisions are entirely foreign to the case of stock standing in the names of our own citizens. It neither enlarges nor abridges the power of the Government in this respect.

Further, how will the article work the miracle of placing the bank under the management of British directors? It gives no new rights, no new qualifications.

The constitution of the bank (section the 5th, 7th of the act of incorporation) has provided, with solicitude, these important guards against foreign or other sinister influence: 1. That none but a citizen of the United States shall be eligible as a director. 2. That none but a stockholder, actually resident within the United States, shall vote in the elections by proxy. 3. That one fourth of the directors, who are to be elected annually, must every year go out of the direction. 4. That a director may, at any time, be removed and replaced by the stockholders at a general meeting. 5. That a single share shall give one vote for directors, while any number of shares, in the same person, copartnership, or body politic, will not give more than thirty votes.

Hence it is impossible that the bank can be in the management of British directors—a British subject being incapable of being a director. It is also next to impossible that an undue British influence could operate in the choice of directors, out of the number

of our own citizens. The British king, or British subjects out of the United States, could not even have a vote by attorney, in the choice. Schemes of secret monopoly could not be executed, because they would be betrayed, unless the secret was confined to a small number. A small number, no one of whom could have more than thirty votes, would be easily overruled by the more numerous proprietors of single or a small number of shares, with the addition of the votes of the United States.

But here again it is to be remembered that as to combination with our own citizens, in which they were to be ostensible for any pernicious foreign project, the article under consideration is perfectly nugatory. It can do neither good nor harm, since it merely relates, as to the exemption from confiscation and seizure on our part, to the known property of British subjects.

It follows, therefore, that the dangers portrayed to us from the speculative enterprises of his Britannic Majesty are the vagaries of an over-heated imagination, or the contrivances of a spirit of deception; and that so far as they could be supposed to have the least color, it turns upon circumstances upon which the treaty can have no influence whatever. In taking pains to expose their futility I have been principally led by the desire of making my fellow-citizens sensible, in this instance, as in others, of the extravagancies of the opposers of the treaty.

One artifice to render the article unacceptable has been to put cases of extreme misconduct, on the other side,—of flagrant violations of the law of nations, of war, of justice, and of humanity; and to ask,

whether, under such circumstances, the confiscation or sequestration of debts would not be justifiable? To this the answer is, that if circumstances so extraordinary should arise, as, without the treaty, would warrant so extraordinary an act, they will equally warrant it under the treaty. For cases of this kind are exceptions to all general rules. They would excuse the violation of an express or positive, as well as of a tacit or virtual, pledge of the public faith: which describes the whole difference between the existence and non-existence of the article in question. They resemble those cases of extreme necessity (through excessive hunger, for instance), which, in the eye of the law of nature, will excuse the taking of the property of another, or those cases of extreme abuse of authority of rulers, which, amounting unequivocally to tyranny, are admitted to justify forcible resistance to the established authorities. Constitutions of government, laws, treaties, all give way to extremities of such a description: the point of obligation is to distinguish them with sincerity, and not to indulge our passions and interests in substituting pretended for real losses.

A writer, who disgraces the name of CICERO by adopting it, makes a curious remark by way of objection. He affirms that the article is nugatory, because a treaty is dissolved by a state of war, in which state the provision is designed to operate. If this be true, the article is at least harmless, and the trouble of painting it in such terrific colors might have been spared. But it is not true. Reason, writers, the practice of all nations, accord in this position, that

those stipulations which contemplate the state of war —in other words, which are designed to operate in case of war, preserve their force and obligation when war takes place.* To what end else all the stipulations which have been cited from so many treaties? †

Previous to a conclusion I shall observe, barely with a view to accuracy, that the article leaves unprotected all vessels, goods, and merchandises—every species of property, indeed, except debts between individuals and the property of individuals in the public funds and in public and private banks. With this exception, whatever before may have been liable to confiscation or sequestration still remains so, notwithstanding any thing contained in this article.

To overrate the value and force of our own arguments is a natural foible of self-love; to be convinced without convincing others, is no uncommon fate of a writer or speaker; but I am more than ordinarily mistaken if every mind open to conviction will not have been satisfied by what has been offered—that the 10th article of the treaty lately negotiated with Great Britain, does nothing but confirm, by a positive agreement, a rule of the law of nations, indicated by reason, supported by the better opinion of writers, ratified by modern usage, dictated by justice and

* Vatel, B. III., Ch. X.

† This writer is as profligate as he is absurd. Besides imputing to *Camillus*, in general terms, a number of things of which he never dreamt, he has the effrontery to forge, as a *literal quotation* from him (calling it his *own language* and designating it by *inverted commas*), a passage respecting the impressing of seamen, which certainly not in terms, nor even in substance, upon fair construction, is to be found in any thing he has written. Not having all the numbers of *Cicero* at hand, I may mistake, in attributing to him the principal sentiment, which is from memory, but I have under my eye the number which witnesses his forgery.

good faith, recognized by formal acts and declarations of different nations, witnessed by diplomatic testimony, sanctioned by our treaties with other countries, and by treaties between other countries, and conformable with sound policy and the true interests of the United States.

The discussion has been drawn out to so great a length, because the objections to this article are amongst those which have been urged with the greatest warmth and emphasis against the treaty, and its vindication from them, if satisfactory, must go far toward securing to it the public suffrage. Citizens of America, it is for you to perform your part of the task; it is for you to weigh with candor the arguments which have been submitted to your judgments; to consult, without bias, the integrity of your hearts; to exile prejudice, and to immolate on the altar of truth the artifices of cabal and falsehood! There can then be no danger that patriotism will have to lament, or national honor to blush, at the sentence you shall pronounce.

The articles which adjust the matters of controversy between the two countries, all those which are permanent, have now been reviewed. Let me appeal to the consciences of those who have accompanied me in the review; if these articles were all that composed the treaty, would it be the better that they should exist—or that all the sources of rupture and war with Great Britain should have survived the negotiation to extinguish them, and should still actually subsist in full vigor? If every enlightened and honest man must prefer the former—then let me make another

observation, and put another question. The remaining articles of the treaty, which constitute its commercial part, expire by their own limitation at the end of twelve years. It is in the power of either party, consistently with the instrument, to terminate them at the end of the expiration of *two* years after the present war between France and Great Britain.

Is it at all probable that they can contain any thing so injurious, considering the short duration which may be given to them, as to counterbalance the important consideration of preserving peace to this young country; as to warrant the excessive clamors which have been raised; as to authorize the horrid calumnies which are vented; and to justify the systematic efforts which are in operation to convulse our country and to hazard even CIVIL WAR? *

CAMILLUS.

NO. XXIII.†

1795.

The preceding articles having adjusted those controversies which threatened an open rupture between the two countries, it remained to form such dispositions relative to the intercourse, commerce, and navigation of the parties as should appear most likely to preserve peace, and promote their mutual advantage.

Those who have considered with attention the in-

* In applying the character of dishonesty and turpitude to the principle of confiscation or sequestration, I am far from intending to brand as dishonest men all those whose opinions favor it. I know there are some ardent spirits chargeable with the error, of whose integrity I think well.

† This and the seven succeeding numbers are from the pen of Rufus King, excepting the parts within brackets, which are in Hamilton's hand.—ED.

terests of commerce will agree in the opinion, that its utility, as well as general prosperity, would be most effectually advanced by a total abolition of the restraints and regulations with which the jealousies and rival policy of nations have embarrassed it. But though we are not chargeable with having contributed to the establishment of these errors, so discouraging to the industry and perplexing in the intercourse of nations, we found them so deeply rooted and so extensively prevalent, that our voice and opinions would have been little regarded, had we expressed a desire of a system more liberal and advantageous to all.

The rights of commerce among nations between whom exist no treaties, are imperfect.

"The law of nature," says Vatel (B. I., s. 89), "gives to no person whatever the least kind of right to sell what belongs to him to another who does not want to buy it; nor has any nation that of selling its commodities or merchandise to a people who are unwilling to have them; every man and every nation being perfectly at liberty to buy a thing that is to be sold, or not to buy it, and to buy it of one rather than of another. Every State has constantly," continues the same author, "a right to prohibit the entrance of foreign merchandise, and the people who are interested in this prohibition have no right to complain of it." States by convention may turn these imperfect into perfect rights, and thus a nation, not having naturally a perfect right to carry on commerce with another, may acquire it by treaty. A simple permission to trade with a nation gives no perfect right to that trade; it may be carried on so long as permitted, but

the nation granting such permission is under no obligation to continue it. A perfect right in one nation to carry on commerce and trade with another nation can alone be procured by treaty.

From the precarious nature of trade between nations, as well as from the desire of obtaining special advantages and preferences in carrying it on, originated the earliest conventions on the subject of commerce. The first commercial treaty that placed the parties on a more secure and better footing in their dealings with each other than existed in their respective intercourse with other nations, inspired others with a desire to establish, by similar treaties, an equally advantageous arrangement. Thus one treaty was followed by another, until, as was the case when the United States became an independent power, all nations had entered into extensive and complicated stipulations, concerning their navigation, manufactures, and commerce.

This being the actual condition of the commercial world when we arrived at our station in it, the like inducements to render certain that which by the law of nations was precarious, and to participate in the advantages secured by national agreements, prompted our Government to propose to all, and to conclude with several, of the European nations, treaties of commerce.

Immediately after the conclusion of the war, Congress appointed Mr. Adams, Doctor Franklin, and Mr. Jefferson, joint commissioners, to propose and conclude commercial treaties with the different nations of Europe. This commission was opened at Paris,

and overtures were made to the different powers (including Great Britain) through their ministers residing at Paris. The basis of these numerous treaties, which Congress were desirous to form, was, that the parties should respectively enjoy the rights of the most favored nations. Various answers were given by the foreign ministers, in behalf of their several nations. But the treaty with Prussia was the only one concluded, of the very great number proposed by the American commissioners. Mr. Adams, in 1785, was removed to London, Dr. Franklin soon after returned to America, and Mr. Jefferson succeeded him as minister at Paris. Thus failed the project of forming commercial treaties with almost every power in Europe. Treaties with Russia, Denmark, Great Britain, Spain, and Portugal would have been of importance; but the scheme of extending treaties of commerce to all the minor powers of Europe, not omitting his Holiness the Pope, was, it must be acknowledged, somewhat chimerical, and could not fail to have cast an air of ridicule on the commissions that with great solemnity were opened at Paris.

The imbecility of our National Government, under the articles of confederation, was understood abroad as well as at home; and the opinions of characters in England, most inclined to favor an extensive commercial connection between the two countries, were understood to have been opposed to the formation of a commercial treaty with us, since, from the defects of our articles of union, we were supposed to be destitute of the power requisite to enforce the execution of the stipulations that such a treaty might contain.

We must all remember the various and ill-digested laws for the regulation of commerce, which were adopted by the several States as substitutes for those commercial treaties, in the conclusion of which our commissioners had been disappointed; the embarrassments which proceeded from this source, joined to those felt from the derangement of the national treasury, were the immediate cause which assembled the convention at Philadelphia in 1787. The result of this convention was the adoption of the present Federal Constitution, the legislative and executive departments of which each possess a power to regulate foreign commerce: the former, by enacting laws for that purpose; the latter, by forming commercial treaties with foreign nations.

The opinion heretofore entertained by our Government, respecting the utility of commercial treaties, is not equivocal; and it is probable that they will, in future, deem it expedient to adjust their foreign trade by treaty, in preference to legislative provisions, as far as it shall be found practicable, on terms of reasonable advantage. In the formation of the regulations that are legislative, being *ex parte*, the interest of those who establish them is seen in its strongest light, while that of the other side is rarely allowed its just weight. Pride and passion too frequently add their influence to carry these regulations beyond the limits of moderation; restraints and exclusions on one side beget restraints and exclusions on the other; and these retaliatory laws lead to, and often terminate in, open war: while, on the other hand, by adjusting the commercial intercourse of nations by

treaty, the pretensions of the parties are candidly examined, and the result of the discussion, it is fair to presume, as well from the experience of individuals in private affairs, as from that of nations in their more important and complicated relations, establishes those regulations which are best suited to the interests of the parties, and which alone afford that stability and confidence so essential to the success of commercial enterprise.

That our present government have thought a commercial treaty with Great Britain would be advantageous, is evident, not alone from the special and distinct commission given to Mr. Jay to form one, but likewise from the letter of Mr. Jefferson to Mr. Hammond, of the 29th of November, 1791, which was the first letter to that minister after his arrival, in which the Executive says: "With respect to the commerce of the two countries, we have supposed that we saw, in several instances, regulations on the part of your Government which, if reciprocally adopted, would materially injure the interests of *both nations;* on this subject, too, I must beg the favor of you to say, whether you are authorized to conclude or to negotiate arrangements with us which may fix the commerce between the two countries on principles of reciprocal advantage."

Further, from the first session of Congress, to that during which Mr. Jay's appointment took place, efforts were made to discriminate, in our revenue and commercial laws, between those nations with whom we had, and those with whom we had not, commercial treaties—the avowed object of which discrimination

was, to place the latter nations on a less advantageous commercial footing than the former, in order to induce them likewise to form commercial treaties with us; and it cannot be forgotten by those who affect to suppose that it was not expected that a treaty of commerce would be formed by Mr. Jay, that *Mr. Madison's* commercial resolutions, which were under consideration at the time of Mr. Jay's appointment, grew out of, and were built upon, a clause of Mr. Jefferson's report of the 26th December, 1793, which asserts that Great Britain discovered no disposition to enter into a commercial treaty with us. The report alluded to is explicit in declaring a preference of friendly arrangements, by treaties of commerce, to regulations by the acts of our Legislature, and authorizes the inference, under which the commercial resolutions were brought forward, that the latter should be resorted to only when the former cannot be effected.

The power of the Executive to form commercial treaties, and the objection against the commercial articles before us, as an unconstitutional interference with the legislative powers of Congress, will, in the sequel, be distinctly examined, together with other objections on the point of constitutionality.

Against the policy of regulating commerce by treaty, rather than by acts of the Legislature, it is said that the legislative acts can, but that a treaty cannot, be repealed. This remark is true, and of weight against the formation of commercial treaties which are to be of long duration, or like our commercial treaty with France, which is permanent. For, as we

are yearly advancing in agriculture, manufactories, commerce, navigation, and strength, our treaties of commerce, especially such as, by particular stipulations, shall give to the parties other rights than those of the most favored nation, ought to be of short duration, that, like temporary laws, they may, at an early day, expire by their own limitation, leaving the interests of the parties to a new adjustment, founded on equity and mutual convenience.

Of this description are the commercial articles of the treaty with Great Britain; for none of them can continue in force more than twelve years; and they may all expire, if either party shall choose it, at the end of two years after the peace between France and Great Britain.

Did the limits assigned to this defence admit a review of the commercial and maritime codes of the principal European nations, we should discover one prevailing feature to characterize them all: we should see the general or common interest of nations, everywhere, placed in a subordinate rank, and their separate advantage adopted, as the end to be attained by their respective laws. Hence, one nation has enacted laws to protect their manufactures, another to encourage and extend their navigation, a third to monopolize some important branch of trade, and all have contributed to the creation of that complicated system of regulations and restraints which we see established throughout the commercial world.

One branch, and a principal one of this system, that which establishes the connection between the several European nations and their colonies, merits

our particular attention. An exact knowledge of this connection would assist us in forming a just estimate of the difficulties that stand in opposition to our claim of free and full participation in the colony trade of Great Britain.

Unlike the plan of colonization adopted by the ancient governments, who, from the crowded population of their cities, sent forth and established beneath their auspices new and independent republics, the colonies of modern times have been planted with entirely different views; retained in a state of dependence on the parent country, their connection has been made subservient to that spirit of monopoly which has shown itself among all the commercial powers. Every European nation has its colonies, and for that reason prohibited all foreigners from trading to them.

Important political events arise and pass in such quick succession, that we are liable to forget facts and opinions familiar to us in periods within the ordinary powers of recollection. No subject was more critically examined, or generally understood before the American Revolution, than that which respected the connection between Great Britain and her colonies; all were then agreed, that the colony trade and navigation were subject to the restraints and regulations of the parent state. It was not against this dependence and commercial monopoly that the colonies complained! They were willing to submit to them. It was the unjust attempt to tax them, to raise a revenue from them, without their consent, which combined that firm and spirited opposition which effected a division of the empire. Thus the Congress of 1775,

in their last address to the inhabitants of Great Britain, say: "We cheerfully consent to such acts of the British Parliament as shall be restrained to the regulations of our external commerce, *for the purpose of securing the commercial advantages of the whole empire to the mother country*, and the commercial benefit of its respective members; excluding every idea of taxation, internal or external, for the purpose of raising a revenue on the subjects in America without their consent." The "colonial codes" of other nations are marked with the same spirit of monopoly. Thus Portugal shuts out all foreigners from the Brazils as well as from her Asiatic possessions; Spain, from South America and her West India islands; France excludes all foreigners from her Asiatic dominions, and limits within narrow bounds their intercourse with her colonies in the West Indies. Holland guards, with the miser's vigilance, the access to her Spice islands, and imitates, though with somewhat less rigor, the policy of the other powers in her West India possessions. And England, by her act of navigation, which has been in operation for more than a century, asserted, and hitherto has uniformly adhered to, the like system of exclusion and monopoly.

Notwithstanding the intimate alliance, the family compact, between France and Spain, the former has not been able to procure admission into the Spanish colonial territories, where she might have acquired immense wealth by the sale of her manufactures, her wines, and her brandies. Holland, though a part of the Spanish monarchy long after the discovery of America and the establishment of the Spanish power

in that quarter of the world, was unable, after her separation from Spain, and the acknowledgment of her independence, even in the zenith of her splendid power upon the ocean, to obtain by force or treaty a share in the Spanish colony trade to South America. The rival wars between the English and the Dutch toward the close of the last century, which originated in commercial competition and jealousy, were successively terminated without England yielding the smallest departure from the exclusive commercial system contained in her act of navigation.

Great Britain, though maintaining her exclusive laws against other nations at different periods, has shown the strongest desire to share in the rich trade of Spain with her colonies. The war that commenced in 1739 was occasioned by the firm, but irregular, opposition of Spain to the contraband efforts of British traders.

The impediments Great Britain has uniformly met in her attempts to extend her settlement in the Bay of Honduras, to form establishments at Falkland's Island, and more recently at Nootka Sound, afford additional proofs of the fixed policy of Spain on the subject of her colony trade.

Portugal, whose political safety more than once has appeared to depend upon the efficacious aid of Great Britain, does not yield to her ally any portion of her valuable colonial commerce.

So uniform and persevering has been the practice of nations on this point, that in the latest treaties of commerce between France and Spain, between each of these powers and Great Britain, between Great

Britain, Sweden, Denmark, Holland, and Portugal, we do not discover that any one of these powers has consented to admit the others to a participation in the trade and navigation to their respective colonies—the Assiento contract for the supply of negroes to the Spanish colonies, which has been made by Spain with several powers, is an unimportant and solitary exception to this rule.

Montesquieu calls this law appropriating the colony commerce to the benefit of the parent state, "A fundamental law of Europe." "It has been established," says this enlightened Frenchman, "that the metropolis or mother country alone shall trade in the colonies, and that for very good reasons; because the design of the settlement was the extension of commerce, not the foundation of a city or new empire. Thus it is still a fundamental law of Europe, that all commerce with a foreign colony shall be regarded as a mere monopoly, punishable by the laws of the country; and in this case we are not to be directed by the laws and precedents of the ancients, which are not at all applicable."

"It is likewise acknowledged, that a commerce established between the mother countries does not include a permission to trade in the colonies; for these always continue in a state of prohibition." [Montesquieu, Liv. XXI., Chap. XVII.]

This subject is of too great importance not to be pursued a little further. Principles connected with it, and such as will continue to operate whether we sanction or condemn them, remain to be disclosed. It is true that the principal end of the dominion that

the European powers have held over their colonies, has been the monopoly of their commerce, "since in their exclusive trade (as has been observed by a sensible writer on the subject) consist the principal advantages of colonies, which afford neither revenue nor force for the defence of the parent country"; but this is not the sole object. Some nations, and among them Great Britain, have viewed the exclusive navigation and trade to their colonies, in the light in which they have seen their coasting trade and fisheries,—as a nursery for that body of seamen whom they have considered not only as necessary to the prosperity and protection of commerce, but as essential to the defence and safety of the state.

The situation of Great Britain in this respect is peculiar. When compared with several of the neighboring powers, her numbers and military forces are manifestly inferior. The armies kept on foot in peace, as well as those brought into the field in war, by the great nations in Europe, are so decidedly superior to those of Great Britain, that were she a continental power, her rivals would easily be an overmatch for her. The ocean is her fortification, and her seamen alone are the soldiers who can defend it. When Great Britain shall become an inferior maritime power, when her enemy shall acquire a decisive superiority on the sea, what will prevent a repetition of those conquests the examples of which we find in her early history? No subject has been more profoundly thought on than this has been in Great Britain. Her policy, from the date of her navigation act, has been guided by these considerations; that

her national safety depends on her wooden walls, is a maxim as sacred in Britain, as it once was in Athens. Her statesmen, her merchants, her manufacturers, and her yeomanry comprehend and believe it.

Is it then surprising, that we see her so anxious to encourage and extend her navigation, as to exclude, as far as practicable, foreigners from any share of her fisheries, her coasting, and her colony trde? Does not candor require us to admit, since her national defence rests upon her navy, which again depends on her seamen, which an extensive navigation can alone supply, that Great Britain, having more to risk, is among the last powers likely to break in upon or materially to relinquish that system of exclusive colony trade, that has so long and uniformly prevailed among the great colonizing powers?

America has her opinions, perhaps prejudices, on the subject of commerce: she is, and, at least until she shall become a naval power, will continue to be, without colonies. But her laws manifest a similar spirit with those of other nations, in the regulations which they prescribe for the government of her fisheries and her coasting trade. The object of these laws is an exclusion of foreign competition, in order to encourage and increase her own navigation and seamen; from which resources, not only in wars between other nations, but likewise in those in which she may be engaged, important commercial and national advantages may be expected. These opinions deserve attention; they have already had and will continue to have a suitable influence with her Government. But we should remember, that other nations have likewise

their opinions and prejudices on these subjects; opinions and prejudices not the less strong or deeply rooted for having been transmitted to them through a series of past generations. Thus in England, not only the public opinion, but what is more unconquerable, the *private interests* of many individuals will oppose every change in the existing laws that may be supposed likely to diminish their navigation, to limit their trade, or in any measure to affect disadvantageously their established system of national commerce.

It cannot have escaped notice, that we have among us characters who are unwilling to see stated the impediments that stand in the way of the commercial arrangements which, they contend, should be conceded to us by foreign nations, and who are ready to charge those who faithfully expose them, with an inclination to excuse or vindicate the unreasonable denials of our commercial rivals, and with a desire to yield up the just pretensions of our country. The article seems too gross to be dangerous with a sensible people, but the public should notwithstanding be on their guard against it. They should dispassionately examine the real difficulties to be encountered in the formation of our commercial treaties. They should inquire and ascertain how far other nations, seeking the same advantages, have been able to succeed. They should further compare the treaty in question with those we have made before with other nations. The result of such investigation, so far from warranting the condemnation of the commercial articles of the treaty before us, it is believed, would demonstrate that these articles make a wider

breach in the British commercial system than has ever before been made; that on their commercial dispositions they are preferable to any treaty we have before concluded; and that there is rational ground to believe that the treaty will have a tendency friendly to the agriculture, the commerce, and the navigation of our country.

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However uniform may have been the law of Europe in relation to the colonial establishments, no pains have been spared to create an opinion that France has been guided by a more liberal policy than the other colonizing powers, and that the regulations of her colony trade were essentially dissimilar from theirs; moreover, that her disinterestedness was so great, that she not long since proposed to our Government to establish, by treaty, a trade between us and her West India colonies equally free with that which prevails in her own intercourse with them. The object of these attempts is readily perceived.

As there was no probability that Great Britain would consent to our trading with her West India colonies on the same terms as she herself does; as it was foreseen that limitations and conditions would accompany any agreement that should be made on this subject; to extol the liberty of France, and exclaim against the monopolizing views of Great Britain, were deemed suitable means to excite a prejudice against the expected adjustment of the commercial

intercourse between us and the British West India colonies.

A comparison of the footing by which our trade stood with the French and British West India colonies, after the completion of our Revolution, and before the present war in Europe, with a concise exposition of the real views of France on the subject of a new commercial treaty, will best demonstrate the want of candor and patriotism in those Americans who have submitted to become agents in propagating these errors.

France, like England, has endeavored to secure the greatest possible portion of advantage to herself, by her colonial laws, and the concessions yielded to foreigners have been only such deviations from an entire monopoly as her own interest has rendered indispensable. France, in imitation of the English navigation law, as early as 1727, established an ordinance, confirming to the mother country the monopoly of the trade to her colonies, and excluding thereby all foreigners. Experience proved the necessity of moderating the rigor of their ordinance, and relaxations in favor of a limited foreign intercourse existed at the time when our commercial treaty with France was concluded, by the thirtieth article of which it is agreed that France will continue to the citizens of the United States the free ports, which have been and are open in her West India islands, to be enjoyed agreeable to the regulations which relate to them. A system of regulations relative to the trade of foreigners with the French islands was promulgated in 1784. This ordinance established one free port at St. Lucie,

another at Martinique, another at Gaudaloupe, another at Tobago, and three others at St. Domingo, to which foreign vessels of the burthen of sixty tons and upward might carry for sale woods of all sorts, pit coal, live animals, fatted beef, salted fish, rice, Indian corn, vegetables, green hides, peltry, turpentine, and tar. This was followed by the arrêts of September, 1785, which by imposing heavy duties on foreign salted fish, and establishing large bounties on those of the national or French fishery, materially affected the foreign commerce with the French islands in this important article of supply and consumption.

Such were the duties on the foreign and the premiums on the national fish, that together they would have been equivalent to a prohibition of the former, had the national fishery been able to supply the consumption.

In return for these articles, which alone were permitted to be imported by foreigners into the French islands, and which it will be observed excluded some of our principal staples, especially *flour*, they were allowed to purchase and bring away of the productions of the islands only molasses and rum.

All cotton, coffee, sugar, and other productions (rum and molasses excepted) were prohibited; and we could, except occasionally by local relaxations of the general law, rightfully obtain none of them from the French West India islands. This was the footing of our trade under our treaty and the standing edict which preceded the French Revolution, and even this was liable to still further limitations, whenever France should think proper to impose them; the treaty

securing only a right to as free a commerce as France should grant to other foreign nations.

Great Britain has permitted the importation into her West India colonies of all the foreign articles allowed by France to be imported into her islands (salted fish and salted beef excepted), and she moreover permitted the importation of foreign tobacco, flour, meal, biscuit, wheat, and various other grains which France prohibited. In return for these commodities, Great Britain permitted the exportation from her islands to our country, of rum and molasses, and moreover of sugar, coffee, cocoa, ginger, and pimento, together with such other articles as are allowed to be carried from their islands to any other foreign country.

Great Britain prohibited the importation and exportation of most of these articles to and from all foreign nations, except the United States; France permitted the intercourse with her colonies, under the same limitations to us in common with all other foreign nations.

The articles received by us from Great Britain, for the supply of her West India islands, exceeded in variety those received from us by France for the supply of her islands; the British West Indies were, therefore, in the ordinary and established course, more extensive customers to us than the French West Indies. Again, the articles which we received from the British West Indies, and which we were prohibited from receiving from the French West Indies, were among the most valuable of their productions, and, from the force of habit, some of them are

included in the catalogue of articles of the first necessity in our consumption. In point of supply, therefore, the British were better furnishers, their colonial laws being much less restrictive than those of France.

Though the regulations of the British West India trade were more favorable to agriculture than those of France, and though the articles with which we were supplied from the British islands were more numerous and valuable than those obtained from the islands of France, the colony system of the latter was preferable to that of the former in relation to our navigation. France permitted our vessels of and above sixty tons burthen to carry and bring away the articles not prohibited in the foreign trade with her islands, while Great Britain confined the trade to her own vessels and excluded those of all foreign nations.

Difference of situation, and not of principle, produced this variety or distinction in the colony system of the two nations. France being able from her resources to supply most of the articles requisite for the consumption of her West Indies, and from her great population, having a proportionate demand for the productions of her islands, she has been carefully restrictive in the trade between her colonies and foreign countries as to the articles of import and export.

All the productions of her islands must go to the mother country, except rum and molasses; these articles were not confined to France, because they would have directly interfered with the valuable

manufacture of her brandies. On the other hand, Great Britain, being less able from her internal resources to supply the articles necessary for the consumption of her West Indies, and her population or home demand not requiring the whole productions of her islands, she has been more liberal in the trade allowed to be carried on between her colonies and foreign countries as to the articles of import and export. But her navigation being adequate to the whole trade of all her dominions, while that of France required the addition of foreign bottoms, Great Britain has excluded entirely from her colony trade the foreign vessels of all nations, while France has admitted them to share in the foreign trade permitted to her West India islands.

Both France and Great Britain relax their colonial laws in times of occasional scarcity, and when they are engaged in war; during which, the intercourse with their West India possessions is laid more open to foreigners. The catalogue of supplies is sometimes enlarged, and Great Britain, as well as France, during these relaxations, permits American vessels to resort to, and engage in the commerce of, their islands.

It is, notwithstanding, from the permanent laws alone of these nations, that we are able to infer their views in relation to their colony trade; the exceptions and deviations that become necessary, by reason of accidental scarcity or the embarrassments of war, serve only to explain more clearly the principles of the permanent system.

The result of this comparison affords no support for the assertion that France has been less exclusive

or more liberal in her colony system, than Great Britain. Both these nations have in the establishment of their colonial laws alike disregarded the interests of foreign nations, and have been equally under the control of the principles of self-interest, which ever have and ever will govern the affairs of nations.*

Nothing can be more erroneous, than the opinion that any nation is likely to yield up its own interest, in order, gratuitously, to advance that of another. Yet we frequently hear declarations of this kind, and too many honest citizens have surrendered themselves to this delusion ; time and experience will cure us of this folly.

Equal artifice has been practised, and no less credulity displayed, on the subject of a new treaty of commerce, which, it is boldly asserted, France from the most *disinterested* motives has offered to us. It should be recollected that France already has a treaty of commerce with us, a treaty that is not limited to two years, nor twelve years, but one that is to endure forever. This treaty is as favorable to France as she can desire, or we in our utmost fondness be disposed to make. It secures to her our acquiescence in an exclusion from her Asiatic dominions, and in fresh regulations as her interest shall dictate relative to our intercourse with her West India possessions; it excludes us from her fisheries on the Banks of Newfoundland, which she was unwilling to share with us, and it gives to her every commercial favor or privilege which by treaty

* The opinion heretofore cited of *Montesquieu*, a Frenchman, agreeing with facts, is a positive testimony that the principle of the French system, like the English, is *monopoly*.

we may yield to any other nation, freely when freely granted, and when otherwise on yielding the same equivalent; her productions, her manufactures, her merchandises, and her ships may come into all our ports to which any other foreign productions, manufactures, merchandises, or ships may come; they are severally to pay only the *lowest* duties paid by any other nation, and no other nation in its intercourse and trade with us is, in any instance, to have a preference over her. A variety of other regulations are inserted in this treaty useful to France and not particularly disserviceable to us.

This treaty has been religiously observed and executed on our part; France has repeatedly violated it in the article which makes enemy's goods free in neutral bottoms, while it is understood she has faithfully observed it in the article that makes neutral goods lawful prize when found in enemy bottoms.

If it be true that nations, in justice to themselves, are bound to decline the abandonment of their own interest, for the purpose of promoting, at their own expense and detriment, the interest of others, ought we too readily to credit an opposite opinion? Ought we not to expect full proof of the sincerity of those declarations that are intended to produce a belief of this disinterested and self-denying course? Ought not the very proposal of such a measure, from its extraordinary nature, inspire circumspection, and put a prudent nation on its guard? If, moreover, the overture should occur at a moment when we have ascertained that those who make it desire, and are, in fact, pursuing objects incompatible with the dis-

interestedness which it avows; if while it is said we wish that you should remain in peace with those who hold this language, neglect no means to engage our citizens to violate their neutral duties and thereby expose their country to war; if when we are told "we rejoice in the freedom of a sister republic," all the arts of intrigue, so much more dangerous by our unsuspicious temper, and unlimited affection for those who practise them, were employed to alienate our attachment from our own Government, and to throw us into a state of anarchy; if when the fascinating proposal of opening new channels of commerce, which were to give unbounded riches to our merchants, was received with more caution than was desired, we are told that in case of refusal, or evasion (mark the generosity), France would repeal her existing laws which had been dictated by an attachment to the Americans, what must have been our infatuation, what the measure of our folly, had we given implicit credit to words so much at variance with cotemporary actions? But it is asked, do not the letters of Mr. Genet to Mr. Jefferson, which have been published, prove that France desired and offered to enter into a new, disinterested, and liberal treaty of commerce with us? The question shall be fairly examined.

There are two letters from Mr. Genet on this subject. Immediately after his arrival at Philadelphia, in a letter to Mr. Jefferson of the 23d May, 1793, he says: "The French republic has given it in charge to me to propose to your Government to consecrate by a true *family* compact, by a national covenant, the liberal and fraternal basis on which it wishes to

establish the commercial and political system of two people whose interests are inseparably connected."

If the object of this proposal was a revision of our commercial treaty, in order to render the intercourse between us more free and advantageous, this minister was singularly unfortunate in his expressions. He might have employed the fine phrase of consecrating by a true family compact, by a national covenant, the liberal and fraternal basis on which it was wished to establish the commercial system of the two countries, and have been intelligible; but when he tells us, that he is instructed to open a negotiation with our Government, for the purpose of establishing the commercial and political system of the two countries, what are we to understand? That trade and its regulations are alone in view? Or that a family compact establishing the political as well as the commercial system of the two nations, must include likewise the league, or treaty of alliance, whereby the strength and wealth of the two nations should be closely united in the prosecution of a common object?

This ambiguous overture, if its meaning is not too plain to allow the epithet, was received in the most friendly manner by our Government, and on the suggestion that the Senate are united with the President in making treaties, it was understood between Mr. Jefferson and Mr. Genet, that the subject should be deferred till the meeting of Congress.

Before that period, however, Mr. Genet, in a letter of the 30th of September, 1793, renews the proposal to open the negotiation relative to the proposed family compact between us and France; and proves to us

that our benefit was its principal exclusive object, by affectionately intimating in the conclusion of his letter, that he is further instructed to tell us, in case of refusal or evasion on our part to enter into this family agreement, that France will repeal the laws dictated by the attachment of the French for the Americans.

Had it before been doubted whether political engagements relative to war were intended to be connected with the proposed treaty, these doubts must have disappeared on the receipt of this second letter from Mr. Genet; the intimation that the laws of France which operated favorably to our trade with their dominions would be repealed, in case we refused or evaded the conclusion of a new treaty, cannot be reconciled with the belief, that this treaty was sought for from motives purely commercial, or solely to enlarge and add prosperity to our trade.

Mr. Genet at this time had so outraged our Government as to have compelled them to request his recall; he must, therefore, have been convinced, that no conference would be held with him except on points of urgent importance, and such as would not admit of delay. He was therefore answered by Mr. Jefferson on the 5th of November, that his letter had been laid before the President, and would be considered with all the respect and interest *that its objects* necessarily required; and in Mr. Jefferson's letter to Mr. Morris of the 23d of August, we are informed that our Government were desirous to go into a commercial negotiation with France, and, therefore, requested that the powers given to Mr. Genet on that

subject should be renewed to his successor. It has not appeared that this was ever done. His immediate successor, Mr. Fauchet, it is believed, gave no evidence of his having any powers relative to a commercial treaty; and if reports, which arrived with the present minister, having great marks of authenticity, may be credited, he has power only to *digest* the articles of such a treaty, not to *conclude one.*

Notwithstanding the internal evidence contained in the two letters of Mr. Genet was sufficient to have satisfied a sensible people, that something beyond a commercial treaty was connected with the proffered negotiation, and though this conjecture acquired strength from the cautious procedure of our Government on the occasion, yet these letters, and that procedure, have been pressed upon the public as conclusive evidence that France had offered, and our Government refused, to enter into a new treaty of commerce, that would have been highly beneficial to our trade and navigation.

The refutation of this opinion, so injurious to a reasonable and salutary confidence in the integrity and patriotism of our own executive Government, and which the agents of its propagation had spread far and wide, might have been more difficult, had not the minister of France, for the purpose of justifying his own conduct, published his hitherto secret instructions.

By these instructions it appears, that the essential object of this proffered negotiation, was to engage the United States to make common cause with France in the war then foreseen, and which soon broke out with Spain and England ; that the advantages to be

yielded by a new commercial treaty were to be purchased by our uniting with France in *extending the empire of liberty, in breaking up the colonial and monopolizing systems of all nations, and finally in the emancipation of the New World.** This was laying out a large and difficult work, in the accomplishment whereof arduous and numerous perils must be met, to encounter which we were called by no obligation to others, to avoid which we were admonished by all the duties which require us to cherish and preserve our own unparalleled freedom, prosperity, and happiness.

However contradictory this extraordinary project may appear to the friendly communications that had been made by the French Government to ours; however repugnant to the soothing declarations pronounced by Mr. Genet, of the fraternal and generous sentiments of his country toward ours, and of the republican frankness and sincerity that should characterize his deportment, let the following extracts from his instructions published by himself in December, 1793, be consulted in confirmation of this statement, and as an authentic exposition of the genuine views of the French executive council in the mission of Mr. Genet—viz.:

"The executive council have examined the instructions given to the predecessors of the Citizen Genet in America, and they have seen with *indignation*, that while the good people of America *have expressed to us their gratitude in the most lively manner, and given us every testimony of their friendship*, both Vergen-

* This mad scheme, the joining in which was to be the price of the proffered advantages, has since been renounced by France herself as a political chimera.

nes and Montmorin have thought that the *interests of France* required, that the United States *should not obtain that political order and consistency* of which they were capable, because they would thereby quickly attain a strength which they might probably be inclined to abuse. These ministers, therefore, enjoined it upon the representatives of Louis XVI. in America, to hold a passive conduct, and speak only of the personal vows of the king for the prosperity of the United States. The same machiavelism directed the operations of the War of Independence; the same duplicity presided in the negotiations of peace. The deputies of Congress had expressed a desire that the cabinet of Versailles should favor the conquests of the Floridas, of Canada, of Nova Scotia; but Louis and his ministers constantly refused their countenance, regarding the possession of those countries by Spain and England, as useful sources of disquietude and anxiety to the Americans."

After declaring that the executive council proposes to itself a different course, and that it approves of *the overtures*, which had been made as well by General Washington, as by Mr. Jefferson, to Mr. Ternant, relative to the means of renewing and consolidating the commercial regulations between the two countries, they proceed to declare further, " that they are inclined to extend the *latitude of the proposed commercial treaty* (observe, the first proposal of a new commercial treaty came from us, and not from France) by converting it into a national compact, whereby the two people should *combine their commercial with their political*

interests, and should establish an intimate concert to befriend, under all circumstances, the extension of the empire of liberty, to guarantee the sovereignty of the people, and to punish the nations who shall continue to adhere to a colonial system, and an exclusive commerce, by declaring that the vessels of such nations should not be received into the ports of the two contracting parties. This agreement, which the French people will support with all the energy that distinguishes them, and of which they have given so many proofs, will quickly contribute to the emancipation of the New World. However vast this project may appear, it will be easily accomplished, if the Americans will concur in it, and in order to convince them of this, no pains must be spared by the Citizen Genet. For, independent of the benefits that humanity will draw from the success of this negotiation, France, at this moment, has a particular interest that requires us to be prepared to act with efficacy against England and Spain, if, as every circumstance announces, these, in hatred of our principles, shall make war upon us." In this state of things, we ought "to employ every means to reanimate the zeal of the Americans, who are also interested that we should disappoint the liberticide designs of George the Third, of which they likewise may possibly be an object." "The executive council *has reason* to believe that these reflections, *joined to the great commercial advantages* which we are disposed to grant to the United States, will decide their Government to agree to all that the Citizen Genet shall propose to them on our part; but as from the rumors respecting our interior, our

finances, and our marine, the *American administration* may observe a wavering timid conduct! The executive council, in expectation that the American Government will finally decide to make common cause with us, charges the Citizen Genet to take such steps as shall be most likely to serve the cause of liberty and the freedom of the people."

In a supplemental instruction, the executive council say: "As soon as the negotiation concerning a new treaty of commerce shall be practicable, Citizen Genet must not omit to stipulate a positive reciprocity of the exemption from the American tonnage duty." The mutual naturalization of French and American citizens, so far as respects commerce, that has been proposed by Mr. Jefferson and approved by the executive council (this, it is presumed, in the eyes of certain characters, would be free from objection, though the naturalization by treaty, of the subjects of any nation but France, would be treason against the Constitution and against liberty), "will render this exemption from the tonnage duties less offensive to the powers who have a right by their treaties to claim the same exemption, for the casus fœderis by this mutual naturalization will be entirely changed in respect to them. The reciprocal guaranty of the possessions of the two nations, stipulated in the XIth article of the treaty of 1778, must form an essential clause in the new treaty to be concluded! The executive council, therefore, instructs Citizen Genet early to sound the American Government on this point, and to make it an indispensable condition of a free trade to the French West Indies, so interesting for the United States to obtain. It concerns the

peace and prosperity of the French nation, that a people whose resources and strength increase in a ratio incalculable, and who are placed so near to our rich colonies, should be held by explicit engagements to the preservation of these islands. There will be the less difficulty in making these propositions relished by the United States, as the great commerce which will be their price, will indemnify them beforehand for the sacrifices they must make in the sequel. Besides, the Americans cannot be ignorant of the great disproportion between their means and those of the French Republic; that for a long time the guaranty will be merely nominal for them, while it will be real on the side of France. And moreover, that we shall, without delay, take measures to fulfil it on our part, by sending to the American ports, a force sufficient to shelter them from all insults and dangers, and to facilitate their intercourse with our islands and with France";—"and to the end that nothing may retard the conclusion of the negotiations of Citizen Genet with the Americans, and that he may have in his hands all the means which may be employed in forwarding the success of his exertions to serve the cause of liberty, the council, in addition to the full powers hereunto annexed, have authorized the Minister of Marine to supply him with a number of blank letters of marque, to be delivered to such Frenchmen or Americans as should equip privateers in America; the Minister of War will likewise supply him with commissions in blank for the different grades of the army." *

* This measure countenances a conclusion, that it was the intent of the instructions he should take the measures he did with regard to privateering and military expeditions from our territories, to force us into the war in spite of the "wavering and timid conduct of our administration."

These were extraordinary means to enable the French minister to conclude with our Government a pacific treaty of commerce. The above extracts, though not an entire translation of the whole of Mr. Genet's instructions, many parts of which are foreign to the point in discussion, are a faithful abstract of such parts of them as relate to the principles and conduct of the French monarchy toward us, and are explanatory of the views of the executive council on the subject of a new treaty of commerce. It will, I think, prove, if the assertions of that council are to be credited, that the gratitude, of which we have heard so much, ought not to be demanded on account of the principles that influenced the monarchy of France during our war, or subsequent to the peace; and furthermore, it will prove that the real view of the French executive council in the mission of Mr. Genet, was to engage us, by advantages to be conceded in a new commercial treaty, *to make common cause* with France, in the expected war with Great Britain and the coalesced powers. If, then, the established footing of our trade with the British islands has been dictated by that colonial system of monopoly which forms a fundamental law in Europe; and if, moreover, the opinion that we could have procured a new and more liberal treaty of commerce with France, without plunging our country in the present war, is an error, that has been artfully imposed on the public, by exposing these truths, the examination of the treaty with Great Britain is at once freed from the objections and aspersions that have proceeded from these errors.

CAMILLUS.

NO. XXV.

1795.

It will be useful, as it will simplify the examination of the commercial articles of the treaty, to bear in mind and preserve the division that we find established by the 12th, 13th, and the 14th and 15th articles; each respects a particular branch or portion of the trade between the two countries, the regulations whereof differ from, and are severally independent of, each other. Thus one is relative to the West Indies, another to the East Indies, and a third, distinct from both the former, respects our trade with the British dominions in Europe.

That Great Britain will consent to place our trade with her West India colonies upon an equally advantageous footing with her own, is improbable; this would be doing what none of the great colonizing nations has done, or is likely to do; it would be to relinquish the principal ends of the establishment and defence of her colonies; it would be equivalent to making her islands in the West Indies the common property of Great Britain and America, for all commercial and profitable purposes; and exclusively her own in the burden of support and defence.

The Senate have, however, and, I think, wisely, considered the terms and conditions, on which it is agreed by the 12th article that we should participate in the trade of the British West Indies, as less liberal than we may, with reason, expect. The exclusion of all vessels above the burthen of seventy tons, would diminish the benefits and value of this trade; and though we cannot calculate upon obtaining by future

only our own domestic manufactures may be relieved from a dependence on foreign supply, but the catalogue of our valuable exports enriched by the addition of this inestimable production.

In answer to the question that has been stated, it may be further observed that these enumerated articles, though the productions of different territories, being so much alike as not easily to be distinguished, it is probable that the difficulty in discriminating the productions of the British islands from those of a different growth was supposed to be so great, that an apprehension was entertained that the prohibition to re-export the former would be easily evaded and illusory, while the latter remained free.

This apprehension, however, it is believed, was carried too far; as, on a minute examination of the subject, it will be found that our laws relative to drawback, with a few analogous provisions in addition, can be made sufficiently to discriminate and identify, on re-exportation, all such articles of the growth of the British islands as may be within our country, and that they will afford the same security for a faithful and exact execution of the prohibition to re-export such articles as that on which our own Government relies against frauds upon the revenue. [The application of these laws, with the requisite additions and sanctions, may be secured by a precise stipulation for that purpose in the treaty, in such manner as would afford an adequate guard against material evasions.

But though the conduct of the Senate in withholding their assent of this article is conceived, upon

the whole, to be well judged and wise, yet there were not wanting reasons of real weight to induce our negotiator to agree to it as it stands.

The inviolability of the principles of the navigation act had become a kind of axiom, incorporated in the habits of thinking of the British Government and nation. Precedent, it is known, has great influence, as well upon the councils as upon the popular opinions of nations!—and there is, perhaps, no country in which it has greater force than that of Great Britain. The precedent of a serious and unequivocal innovation upon the system of the navigation act dissolved, as it were, the spell by which the public prejudices had been chained to it. It took away a mighty argument derived from the past inflexibility of the system, and laid the foundation for greater inroads upon opinion, for further and greater innovations in practice. It served to strip the question of every thing that was artificial and to bring it to the simple test of real national interest, to be decided by that best of all arbiters, experience.

It may, upon this ground, be strongly argued that the precedent of the privilege gained was of more importance than its immediate extent—an argument certainly of real weight, and which is sufficient to incline candid men to view the motives that governed our negotiator in this particular with favor, and the opinion to which he yielded with respect. It is perhaps not unimportant by way of precedent, that the article, though not established, is found in the treaty.]

Though the 12th article, so far as respects the

terms and conditions of the trade to the British islands, forms no part of the treaty, having been excepted, and made the subject of further negotiation, it may nevertheless be useful to take notice of some of the many ill-founded objections that have been made against it; of this character is that which asserts that the catalogue of articles permitted to be carried by us to the British islands, may be abridged at the pleasure of Great Britain, and so the trade may be annihilated.

The article stipulates that we may carry to any of his Majesty's islands and ports in the West Indies, from the United States, in American vessels, not exceeding seventy tons, any goods or merchandises "being of the growth, manufacture, or production of the said States, *which it is or may be* lawful to carry to the said islands, from the said States, in British vessels"; not all such articles as it is and may be lawful to carry, but in the disjunctive, all such as it is or may be lawful to carry; in other words, all such articles as it is now lawful to carry, together with such others as hereafter it may be lawful to carry. The catalogue may be enlarged, but cannot be diminished. [It may also be remarked incidentally that this objection sounds ill in the mouths of those who maintain the essentiality of the supplies of this country, under all possible circumstances, to the British West Indies; for if this position be true, there never can be reasonable ground of apprehension of too little latitude in the exportation in British vessels, which is to be the standard for the exportation in ours.]

This article has been further criticised on account

of the adjustment of the import and tonnage duties payable in this trade, and it has been attempted to be shown that the footing on which we were to share in the same would, on this account, be disadvantageous, and the competition unequal. What is the adjustment? The article proposes that British vessels employed in this trade shall pay, on entering our ports, the alien tonnage duty payable by all foreign vessels, which is now fifty cents per ton; further, the cargoes imported in British bottoms from British West Indies shall pay in our ports the same impost or duties that shall be payable on the like articles imported in American bottoms; and on the other side, that cargoes imported into the British islands, in American bottoms, shall pay the same impost or duties that shall be payable on the like articles imported in British bottoms—that is to say, the cargoes of each shall pay in the ports of the other only native duties, it being understood that those imposed in the British West Indies, on our productions, are small and unimportant, while those imposed in our ports, on the productions of the West Indies, are high, and important to our revenue. The vessels of each shall pay in the ports of the other an equal alien tonnage duty, and our standard is adopted as the common rule.

Is not this equal? Can we expect or ask that British vessels should pay an alien tonnage duty in our ports, and that American vessels should enter their ports freely, or on payment only of native tonnage duties? Can we in equity require them to pay, on the importation of their cargoes in British vessels, an addition of ten per cent. on the duties payable on the importation

of the like articles in American vessels, and at the same time demand to pay no higher or other duties on the cargoes carried in our vessels to the British islands, than those payable by them on the like articles imported in British vessels? The very stating of the question suggests to a candid mind an answer, that demonstrates the injustice of the objection. [To expect more, were to expect that in a trade in which the opinions and practice of Europe contemplate every privilege granted for a foreign nation as *a favor*, we were by treaty to secure a greater advantage to ourselves than would be enjoyed by the nation which granted the privilege.]

But it is added that our laws impose a tonnage duty of six cents per ton on the entry of American vessels engaged in foreign trade, and it is not known that British vessels pay any tonnage duty on their entry in their ports in the West Indies; and so uniting the two entries, that is, the entry in the West Indies and the entry on a return to our ports, an American vessel will pay fifty-six cents per ton, when the British vessels will pay only fifty cents per ton. If the British Government impose no tonnage duty on their own vessels, and we do impose a tonnage duty on ours, this certainly cannot form an objection against them. They are as free to refrain from the imposition of a tonnage duty on their own ships as we are to impose one on ours. If their policy is wiser than ours in this respect, we are at liberty to adopt it, by repealing the tonnage duty levied on American navigation, which, if we please, may be confined to the particular case; the effect of such a

measure, as far as it should extend, though the duty is small, would be to add a proportionable advantage to our shipping in foreign competition. But the object of the articles in this particular is to equalize, not the duties that each may choose to impose on their own vessels, but those that they shall impose on the vessels of each other; and in this respect the article is perfectly equal. [It is perhaps the first time that the objection of inequality was founded on a circumstance depending on the laws of the party affected by it, and removable at his own option.]

This view of the subject authorizes a belief, that, in the revision of the article, a modification of it may be agreed to that will prove satisfactory. Indeed, from the short duration of the article, taken in connection with the expressions made use of towards the close of it, relative to the renewal of the negotiation, for the purpose of such further arrangements as shall conduce to the mutual advantage and *extension* of this branch of commerce, we may infer that Great Britain contemplates a more enlarged and equal adjustment on this point.

The relaxations which now exist in the colonial systems, in consequence of the necessities of war, and which will change to our disadvantage with the return of peace, have been considered by some as the permanent state of things. And this error has had its influence in misleading the public in respect to the terms and conditions on which we may reasonably expect to participate in trade to the West Indies. But let it be remembered, that the restoration of peace will bring with it a restoration of the laws of

limitation and exclusion, which constitute the colonial system. Our efforts therefore should be directed to such adjustment with Great Britain on this point, as will secure to us a right after the return of peace, to the greatest attainable portion of the trade to her islands in the West Indies.

It has been alleged, should the expected modification of this article retain its present stipulation on the subject of import and tonnage duty, that as France by treaty may claim to enjoy the rights and privileges of the most favored nation, she would demand an exemption from the ten per cent. on the duties upon the productions of the West Indies imported in foreign bottoms, and would moreover be free to impose an alien tonnage on our vessels entering her ports in the West Indies, equal to that imposed on her vessels in our ports. This is true. But in order to make this demand, France must agree, *by treaty*, to open all her ports in the West Indies, to give us a right to import into them flour, bread, tobacco, and such other articles as Great Britain should permit, and which France by her permanent system prohibits; she must also concede to us a right to purchase in her islands, and bring away sugar, coffee, and pimento, which by the same system she also prohibits; she must do all this, because, by our treaty with her, she can only entitle herself to a special privilege granted to another nation, by granting on her part to us the equivalent of what was the consideration of our grant. Should France be inclined to arrange the trade between us and her islands, we certainly shall not object; because, besides the right to such an

arrangement, it would be more advantageous to us than that which now regulates our intercourse with her West Indies.

So much of the 12th article as respects its duration and the renewal of the negotiation previous to the expiration of two years after the conclusion of the war, in order to agree in a new arrangement on the subject of the West India trade, as well as for the purpose of endeavoring to agree whether in any, and in what cases, neutral vessels shall protect enemy's property, and in what cases provisions, and other articles not generally contraband, may become such, form a part of the treaty as ratified by the President. These clauses sufficiently explain themselves, and require no comment in this place. They, however, prove one point, which is, that after every effort on the part of our negotiator, the parties were not able to agree in the doctrine that free bottoms should make free goods, nor in the cases in which alone provisions and other articles not generally contraband, should be deemed such. Leaving, therefore, both these points precisely as they found them (except in respect to provisions, the payment for which, when by the law of nations liable to capture as contraband, is secured), to be regulated by the existing law of nations, it is stipulated to renew the negotiation on these points at the epoch assigned for the future adjustment of the West India trade, in order then to endeavor to agree in a conventional rule, which, instead of the law of nations, should thereafter regulate the conduct of the parties in these respects.

[The 11th article has been passed over in silence as being merely introductory and formal.]

CAMILLUS.

NO. XXVI.

(From the *Minerva.*)*

1795.

The British trade to their possessions in the East Indies, as well as to China, is a monopoly vested by the Legislature in a company of merchants. No other persons in Great Britain, nor in any of her dominions or colonies, can send a vessel to, or prosecute trade independent of the company, with any part of Asia. The right to trade with their possessions in India is not only refused to all British subjects, the India Company excepted, but is one that Great Britain has never before yielded by treaty to any foreign nation. By the terms of the charter to the India Company, among a variety of limitations, they are restrained and confined to a direct trade between Asia and the port of London; they are prohibited from bringing any of the productions of India or China directly to any part of America, as well to the British colonies as to our territories; and moreover, they are restrained from carrying any of the productions of Asia directly to any part of Europe, or to any port in Great Britain, Scotland, or Ireland, except the single port of London.

The 13th article stipulates, that our vessels shall be admitted in all the seaports and harbors of the

* The first twenty-five numbers of Camillus appeared in the *Argus*. The remainder came out in the *N. Y. Minerva*. All were reprinted by Fenno in the *Gazette* of the United States.

British territories in the East Indies, and that our citizens may freely carry on a trade between said territories and the United States in all such articles, of which the importation or exportation shall not be entirely prohibited; provided only that when Great Britain is at war we may not export from their territories in India, without the permission of their local government there, military stores, naval stores, or rice. Our vessels shall pay in this trade the same tonnage duty as is paid by British vessels in our ports; and our cargoes on their importation and exportation shall pay no other or higher charges or duties than shall be payable on the same articles when imported or exported in British bottoms; but it is agreed that this trade shall be direct between the United States and the said territories; that the article shall not be deemed to allow the vessels of the United States to carry on any part of the coasting trade of the British territories in India, nor to allow our citizens to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British local government there.

The British trade to their territories in the East Indies is carried on by a corporation, who have a monopoly against the great body of British merchants. Our trade to the same territories will be open to the skill and enterprise of every American citizen. The British trade to these territories is direct, but confined to the port of London; our trade to the same must likewise be direct, but may be carried on from and to all our principal ports.

The article gives us a right in common with the India Company to carry to these territories, and to purchase and bring from thence, all articles which may be carried to or purchased and brought from the same, in British vessels: our cargoes paying native duties, and our ships the same alien tonnage as British ships pay in our ports. This trade is equally open to both nations; except when Great Britain is engaged in war, when the consent of the British local government is required in order to enable us to export naval stores, military stores, and rice; a limitation of small consequence, none of the articles except nitre being likely to form any part of our return cargoes. Though this article is one against which the objection of a want of reciprocity (so often and so uncandidly urged against other parts of the treaty) has not been preferred, it has not, however, escaped censure.

It is said that we are already in the enjoyment of a less restrained commerce with the British territories in India, and that the treaty will alter it for the worse; inasmuch as we thereby incapacitate ourselves to carry on any part of the coasting trade of the British territories in India, and as we relinquish the profitable freights to be made between Bombay and Canton, and likewise those sometimes obtained from the English territories in Bengal to Ostend.

It would seem a sufficient answer to say, that this trade has heretofore existed by the mere indulgence of those who permitted it; that it was liable to variations; that a total exclusion, especially had it been of us in common with other foreign nations, could

have afforded no just ground of complaint; that the relaxation which has hitherto given us admission to the British Indian territories, was not a permanent, but a mere temporary and occasional regulation, liable to alteration, and by no means to be demanded as the basis of an intercourse to be adjusted by compact with a foreign nation, which would no longer leave the power of alteration in either of the parties.

But in respect to the first objection the article amounts to this, that the rights which it does grant shall not by implication be construed to give a right to carry on any part of the British coasting trade in India.

If we have before shared in this trade by permission, nothing in the article will preclude us from enjoying the same in future. If we did not participate in it, nothing in the article impairs either the authority of the British local government to permit our participation or our capacity to profit by such permission. This objection, therefore, falls to the ground, since the coasting trade remains as it was before the treaty was formed.*

[Further, according to my information.]—It is not the trade between the East Indies and China, as has been erroneously supposed by some persons, but the exportation of rice and other articles, which are exchanged between the British territories in the hither and further Indies, that is denominated the

* [The terms used clearly denote this and nothing more. They are: "It is also understood that the *permission granted by this article* is not to extend to *allow*." This does not negative any preëxisting indulgence, but merely provides that the main grant shall not convert the *revocable indulgence*, if any there was in this particular, into an *irrevocable right* by treaty.]

coasting trade of the British territories in India. The importance of this trade is not well understood; nor am I able to say whether we have heretofore been allowed to carry it on. If we have, the little that we have heard of it leads to an opinion that it is not an object of much consequence. Let it, however, be granted that hereafter we shall not be allowed to engage in it. Shall we have more reason to complain of this exclusion, than we have that we are refused a share in the coasting trade of the European dominions of Great Britain? or that we are excluded from the coasting trade between their islands in the West Indies? or than the British themselves have, that by our prohibiting tonnage duty (being fifty cents per ton on entry of a foreign vessel, when our own coasting vessels pay only six cents per ton, for a year's license) they are excluded from sharing in our coasting trade—a branch of business that already employs a large proportion of our whole navigation, and is daily increasing?

In respect to the second and third objections, it may be remarked, that so far as the trade has been heretofore enjoyed, it has been in consequence of an exception from, and relaxation in, the system by which the European commerce has been regulated; that having depended on the mere occasional permission of the local government, we may safely infer (though it may have been supposed incompatible with the discretionary powers vested in that government, to confer by treaty a positive right to carry on the trade in question) that so long and as often as the interest that has heretofore induced the grant of

this permission shall continue or exist, the permission will be continued or renewed. The stipulation, restraining the trade, may, if the parties see fit, be dispensed with, and the trade may be enlarged, or made free. It being a contract only between them and us, the parties are free to remodify it; and without a formal alteration, if those in whose favor the restraint is made consent to remove it, the other party is released from the obligation to observe it.*

Again—Surat, which is in the neighborhood of Bombay, is the emporium of Guzerat, and of the northern portion of the Malabar coast; the cottons shipped from Bombay to Canton are frequently first sent from Surat to Bombay. Surat belongs to the native powers to which we have free access. If the transportation of cotton and some few other commodities from the coast of Malabar to Canton is an important branch of our commerce, what will prevent our prosecuting it from Surat or any other free port in the hither Indies?

That it may be undertaken from the ports of the native powers is rendered probable by the circumstance, that these freights are supplied principally or

* [This has been affected to be questioned on account of what is called the peremptoriness of the expressions (to wit): "It is *expressly agreed* that the vessels of the United States *shall not carry*," etc. But there is no real room for the question. In a contract between two parties, whether individuals or nations, where a restraint is imposed upon one for the benefit of another, it is always an implied condition of the restraint that it shall continue, *unless dispensed with* by the party for whose benefit it is imposed. Thus the British Government in India may remove the restraint, by continuing the indulgence in this respect heretofore granted. And it seems to me clear that the law which the United States are to pass, for enforcing the prohibition, may, with good faith, be qualified with this provision, "*unless by permission of the British* Government *in India.*"]

alone by the native or black merchants, whose residence would naturally be in the ports under native jurisdiction more frequently than in those under the jurisdiction of any of the foreign powers.

But is it not true (and will not candor admit it?) that the trade to the Asiatic dominions of the European powers has usually been confined to the nation to whom such territories belong? In our treaty with Holland, have we not even stipulated to respect their monopoly of this trade? And by our treaty with France, a nation whose liberal policy is said to have laid us under eternal obligations of gratitude, have we acquired the slightest pretensions, much less a right, to resort to, or trade with, any part of their Asiatic territories?

A late decree of the convention which opened to us the ports in their West Indies, likewise laid open their remaining territories in Asia. But this measure, proceeding from the necessities of the war and their inability to carry on their foreign commerce, will change hereafter, as heretofore it has done, with the establishment of peace. Did this opinion require to be strengthened, it is abundantly confirmed by the navigation act, decreed by the convention; the operation whereof is suspended for the same reason that induced the opening to foreigners that trade to their colonies and territories in the West and East Indies.

The British for more than a hundred years excluded foreigners from a share in their East India trade; for a few years past they relaxed in the rigor of this system. We have availed ourselves of this circumstance, and shared with them in their India commerce. But

this permission can be viewed only as an occasional departure from a general law, which may be affected by a change of circumstances; the duration of which, therefore, is uncertain. The loss and inconvenience to which our merchants may be exposed from the prosecution of a trade depending on regulations arising from inconstant circumstances, and which frequently vary, may, in some measure, be guarded against, where the scene is not remote, and the alterations in the laws can be known soon after they are made. But in the Asiatic and in our other distant commerce, it is of importance that the laws under which an adventure is begun should be permanent. Losses to a considerable amount have been experienced by some of our merchants, who have undertaken distant voyages in the expectation of the continuation of these temporary regulations. The trade, for example, with the Cape of Good Hope (which the Dutch Government ordinarily monopolize to their own people) was some time since opened to foreigners, and some of our citizens profited by it; but others, who had engaged in large adventures to that market, suffered no small disappointment and loss in finding themselves excluded, upon their arrival, by a repeal of the permission to foreigners to trade there. It must then be considered as an important object secured, in respect to the principal proportion of our India trade, that alone which is capable of being pursued as a branch of our commerce, that the treaty turns a *favor* into a *right*, and that our direct intercourse with the British territories in the East Indies, in all respects as broad as that of Great Britain her-

self (except in the articles of rice, naval and military stores, when Great Britain is engaged in war), instead of being an uncertain and hazardous trade, as heretofore, from its precarious nature, it has been, will, hereafter, be as certain as any in which our merchants shall engage.

It is further alleged, by way of objection to this article, that it does not secure to our citizens a right to reside and settle in the British territories in India, without the consent of the British local government. The observation that has been made on a similar objection, in respect to the coasting trade in India, is equally applicable to this. The article leaves subjects precisely in the situation in which it found them. But let it be remembered that the disproportion between the numbers of the native Indians and the foreigners inhabiting their country, is more than one thousand of the former to one of the latter; that the most exact discipline and subordination among the foreigners are therefore essential to the preservation of the British authority over that country; that no foreigner, or even a British subject, is allowed to reside there, except in the character of a servant of the company, or of a licensed inhabitant; that it has long been held as a sound opinion, that unrestrained liberty to the Europeans to emigrate to and settle among the Indians, would, in a short time, overturn and destroy the British empire in India. This danger would by no means be diminished by conferring a right upon the Americans, freely to reside and settle in India; that we shall be allowed to reside and settle there by permission of the local British government,

is fairly to be inferred from the article. But an [absolute right] to an entire liberty on these points might evidently be dangerous to the British government over India—[and in prudence could not have been stipulated].

The advantageous footing on which the trade is placed is so evident, that those who had no reliance on the objections urged against it, but who, nevertheless, have been unwilling to allow the treaty any merit on the score of this article, have endeavored to show that our India trade is of little importance, and of small value.

Whatever article can be supplied by the India Company may likewise be supplied by us, and some of them on better terms by us than by them. The reports of the committee of the directors of the East India Company, published in 1793, when their charter was renewed, afford useful information on this subject, and disclose facts which show the advantages that we shall possess in this trade over the company. They admit, that in the articles of iron, wines, canvas, cordage, arms, and naval and military stores, foreigners can enter into a beneficial competition with them ; and that canvas and cordage and, we may add, all naval stores and several other articles can always be furnished in India by foreigners cheaper than by the Company.

If we appreciate the advantage we have over them, in such articles of supply as are of our own growth or production, as well as in the wines not unusually procured by touching at Madeira on the outward voyage to India, and compare it with the advantage that they

have over us in the few articles of choice which they purchase at the first hands, and which we must import in order to re-export to India, it is probable that our cargoes to India will, on the whole, be laid in as advantageously, if not more so than those of the India Company. If we consider the vast extent of territory, the numerous population, and the established manufactures of India, so far from supposing that a free trade to that country will be of little value to a young and enterprising nation, whose manufactures are still in their infancy, we ought rather to conclude that it is a country with which we should be solicitous to establish a free trade and intercourse.

Every one who has bestowed the slightest attention upon the foreign manufactures consumed in our country, must have observed the general and increasing use of those of India, owing to the better terms on which they can be procured from Asia than from Europe. Though no document is at hand that will show the value of the annual importations from India, it is stated by Mr. Coxe, in his "View of the United States," that the amount in value of our importations from Asia is more than one fifth of the value of our whole annual consumption of foreign commodities. It is true that the porcelain, silks, nankeens, and teas of China form a large portion of this annual importation. But, after a full deduction on this account, a great and profitable branch of our commerce will be found in our trade to the East Indies. It should be remembered, [also,] that it is not the consumption of our own country that regulates the quantity of India goods that we import; other countries have been

supplied through us with the fabrics and productions of both India and China. The treaty will enlarge this demand.*

Several circumstances calculated to give our trade with Asia an advantage against foreign competition, and a preference to our trade with Europe, are deserving of attention.

First.—The direct trade between us and Asia, including the East Indies, as well as China, cannot be prosecuted by the British East India Company, their ships being obliged to return to the port of London, and there to discharge.

Second.—The difference between the duties on Asiatic goods imported in American bottoms direct from Asia, and the duties imposed on the same goods in foreign bottoms from Asia or from Europe; being on all articles a favorable discrimination, and in the articles of teas, the duties on those imported in foreign bottoms being fifty per cent. higher than on those imported in American bottoms.

The particular difference of duties on Asiatic goods imported in American and in foreign bottoms, so favorable to our own navigation, will not be affected by the right reserved by Great Britain to impose countervailing duties in certain cases, that right being relative to the intercourse between the United States and the British territories in Europe.

Third.—The European intercourse with Asia is, in most cases, conducted by corporations or exclusive companies, and all experience has proved that in

* Perhaps from the certainty of the rights which it confers, it may invite a foreign capital to extensive enterprises, in which the United States will be an *entrepôt* between India and a great part of Europe.

every species of business (that of banking and a few analogous employments excepted), in conducting of which a competition shall exist between individuals and corporations, the superior economy, enterprise, zeal, and perseverance of the former will make them an overmatch for the latter; and that while individuals acquire riches, corporations engaged in the same business often sink their capital and become bankrupt. The British East India Company are, moreover, burdened with various terms and conditions, which they are required to observe in their Asiatic trade, and which operate as so many advantages in favor of their rivals in the supply of foreign markets. The company, for example, are obliged annually to invest a large capital in the purchase of British manufactures, to be exported and sold by them in India; the loss on these investments is considerable every year, as few of the manufactures which they are obliged to purchase will sell in India for their cost and charges; besides, from the policy of protecting the home manufactures, the Company are, in a great measure, shut out from supplying India goods for the home consumption of Great Britain. Most of the goods which they import from India are re-exported with additional charges, incurred by the regulations of the Company, to foreign markets, in supplying of which we shall be their rivals, as, from the information of intelligent merchants, it is a fact that Asiatic goods, including the teas of China, are [on an average] cheaper within the United States than in Great Britain.

Fourth.—The manufactures of Asia are not only

cheaper here than in Europe, but in general they are cheaper than goods of equal quality of European manufacture. So long as from the cheapness of subsistence and the immense population of India (the inhabitants of the British territories alone being estimated at forty millions) the labor of a manufacturer can be procured from two to three pence sterling per day, the similar manufactures of Europe, aided with all their ingenious machinery, is likely, on a fair competition, in almost every instance, to be excluded by those of India. So apprehensive have the British Government been of endangering their home manufactures by the permission of Asiatic goods to be consumed in Great Britain, that they have imposed eighteen per cent. duties on the gross sales of all India muslins, which is equal to twenty-two per cent. on their prime cost. The duties on coarser India goods are still higher, and a long catalogue of Asiatic articles, including all stained and printed goods, is prohibited from being consumed in Great Britain.

The British manufacturers were not satisfied even with this prohibitory system; and on the late renewal of the Company's charter, they urged the total exclusion from British consumption of all India goods, and, moreover, proposed that the Company should be held to import annually from India a large amount of raw materials, and particularly cotton, for the supply of the British manufacturers.

Those facts are noticed to show the advantages to be derived from a free access to the India market, from whence we may obtain those goods which would

be extensively consumed even in the first manufacturing nations of Europe, did not the security of their manufactories require their exclusion.*

CAMILLUS.

NO. XXVII.

1795.

The third article contains the terms and conditions of the trade and intercourse that it authorizes between us and the British colonies on the American continent. The twelfth article was intended to adjust the trade between us and the British islands in the West Indies. The thirteenth article secures to us a direct trade with the British territories in the East Indies; and it is the office of the fourteenth and the fifteenth articles to ascertain and establish the terms of the intercourse and trade between the territories of the United States and the British dominions in Europe.

The fourteenth article establishes a perfect and reciprocal liberty of commerce and navigation between the territories of the United States and of the British dominions in Europe; stipulates that *the people and inhabitants* of the two countries respectively, namely, of the United States and of the British dominions in Europe, shall have liberty to come with their ships and cargoes to the ports, cities, and places of each other, within the territories and dominions aforesaid, to resort and reside there, without limitation of time,

* [Great Britain has made it a serious point, in which she has in more than one instance succeeded, to engage foreign powers (the emperor was one) to renounce establishments for carrying on the trade with India, from their own territories; yet this treaty opens all the territories to us. And yet it is not only denied merit, but criminated, in this very particular.]

to hire houses and stores for the purpose of commerce; and that the merchants and traders on each side shall enjoy, for their commerce, the fullest protection and security, subject, notwithstanding, in respect to the stipulations of this article, to the laws of the two nations respectively.

As this article, in the customary language employed in the introductory articles of commercial treaties, speaks of a perfect liberty of commerce and navigation, without excepting any commodity, or specifying any impost or duty, it was possible that a latitude or freedom of trade, inconsistent with the revenue laws and policy of the two nations, might have been claimed under it; hence the propriety of the provision with which the article concludes, and which reserves to the parties respectively the power of avoiding this inconvenience, by continuing and enacting such laws as may be proper for the purpose.

But as under this power again, partial duties, and even partial exclusions, might have been established, whereby ships and merchandises, as well as the articles of the growth, produce, or manufacture of one of the parties, might have been made liable to higher duties and imposts in the territories of the other, than the ships and similar merchandises, and articles of the growth, produce, or manufacture of other nations; or whereby one of the parties might prohibit the importation or exportation, by the other, of any article to and from his territories, the importation or exportation whereof was at the same time free to some other nation: in order to prevent such inequalities, and to secure effectually to the parties a

right to carry on their trade with each other, on terms equally advantageous and extensive with those established by either with any other nation, the fifteenth article stipulates:

1. That no other or higher duty shall be exacted or paid on the ships and merchandises, nor on the articles of the growth, produce, or manufacture of one of the parties, on their entry or importation into the territories of the other, than shall be payable on the like ships and merchandises, and on similar articles of the growth, produce, or manufacture of any other nation.

2. That no article, the importation or exportation of which by either party, to or from the territories of the other, is prohibited, shall be imported or exported to or from the same by any other foreign nation; and that every article allowed to be imported or exported to or from the territories of either party, by any foreign nation, may be imported or exported to or from the same, by the parties respectively.

By these stipulations it is agreed, that the people and inhabitants of the United States and of the British dominions in Europe shall have the right to carry on trade between the said territories in all articles and commodities in which any other foreign nation may trade with either of the parties; that the impost or duties on any article in the course of such trade shall be no other or higher than the lowest imposts or duties paid by any other foreign nation on the like article; that both parties shall remain free, totally to prohibit the importation or exportation, to or from their respective territories, of any species of goods or

merchandise, or to increase the existing duties, or to impose new ones, on the importation of any species of goods or merchandises into their respective territories; such prohibitions and duties operating equally against all foreign nations. So far as respects the interchange of commodities between the parties, these stipulations breathe the spirit of reciprocity. The residue of the fifteenth article principally relates to the navigation which the parties shall employ in this trade.

The first clause of the fifteenth article, in the spirit of those treaties which mutually confer the right of the most favored nations, stipulates that no other or higher duties shall be paid by the ships of the one party in the ports of the other, than such as are paid by the like vessels of all other nations.

By our laws, a difference exists between the tonnage duty paid by an American vessel, and that paid by a foreign vessel in our ports: the American vessel pays only six cents per ton on her entry; the foreign vessel, on her entry, pays fifty cents per ton, and about twenty per cent. more duties on all teas imported from Europe, and ten per cent. more duties on the importation of other goods, than are payable on the importation of the same goods in an American vessel.

By the British laws, the difference between the duties paid by British and foreign vessels in the British ports in Europe is less than that which exists in our ports. The consequence is, that a British vessel, of a given burthen, pays considerably more tonnage duties in the trade between our territories and the British ports in Europe, than is paid by an American vessel of the same burthen, engaged in the same trade.

The trade being laid open to both parties, the principle of equalization of duties was very naturally deemed an equitable basis of treaty. This could be effected by lowering the American alien duties to the British standard, or by raising those of Great Britain to the American standard. The former might have been inconvenient to our revenue [especially since, if it was not general, it would have formed, in respect to foreign nations, an unpleasant discrimination in our laws].

The American tonnage duty, therefore, was left to operate; and by the fifteenth article, it is agreed, that the British Government shall reserve a right to raise the tonnage duty on our vessels entering their ports in Europe, so as to make it *equal* to the tonnage duty payable by their vessels entering our ports; and in order to balance the difference of duties on goods imported into our ports by American or by British vessels, the effect whereof is the same as that which proceeds from an alien tonnage duty, the article further agrees, that the British Government shall reserve a right to impose such duty as may be adequate to effect this end. The preceding clause of this article stipulates, that the vessels and cargoes of each shall pay no higher or other duties than those imposed on the like vessels and cargoes of all other nations. It was therefore necessary to reserve a right to increase against us their alien tonnage duty, and to impose the countervailing duty in question; as, without such reservation the same could not have been done, unless by laws equally operating against all other nations [which would have been unjust in reference to such of them as might not, like us, have discrimi-

nated in their duties between their own and foreign vessels].

Two methods have been suggested by which this countervailing power might be executed.

One by imposing a *pro rata* duty on the importation of goods into the British ports in Europe by American vessels, equal to the difference between the duties payable in our ports on the importation of goods by American or British vessels.

[The other] by imposing the identical duty on the exportation of goods from the British ports in Europe by American vessels, which forms the difference between the duties payable on the importation of the same goods into our ports by American or British vessels.

As the articles imported by our vessels into the British ports in Europe are dissimilar from those imported from the same into our ports, one rule of difference would not effect the equalization sought for; and as our difference of duties is not the same on all articles, being higher on some than on others, [and as, moreover, the quantities and amount of different articles differ widely, and are liable to continual proportional variations,] no uniform [average] rule of countervailing these differences can be devised. The [correct] execution, therefore, of this power, in the method first suggested, is impracticable, and [it is presumed] must be discarded.

The power, then, [it would seem,] can only be [equitably] exercised by imposing on the articles which we shall export in American vessels from the British ports in Europe, a duty identically the same as that

which constitutes, in any case, the difference of duty, payable in our ports, on the same articles imported from the British ports in Europe by a British or an American vessel. Thus they may impose on tea and other Asiatic goods, as well as on the European goods which we shall export from the British ports in Europe, the identical duty or the same sum which constitutes the difference of duties payable in our ports on the importation from thence of the same articles by an American or a British vessel.

The right to countervail our alien tonnage duty by imposing an alien tonnage duty on our vessels entering the British ports in Europe, equal to that which shall be payable on their vessels entering our ports, will continue so long as the commercial treaty shall endure, and will apply to any future increase of the tonnage duty on foreign vessels that we may establish. It is, however, stipulated in the conclusion of the fifteenth article, that we shall abstain from increasing the tonnage duty on British vessels, and also from increasing the difference that now exists between the duties payable on the importation of any articles into our ports in British or in American vessels, until the expiration of two years after the termination of the war between France and Great Britain. But we are free to increase the one or the other, after the expiration of that period. And though the British Government will have a right to countervail, by additional tonnage duties on our vessels, any increase of that duty on their vessels, yet they will have no right to countervail any increase of the difference between the duties payable on the importation of any articles into our ports, in British or

in American vessels, unless by a duty common to all foreign nations; the right reserved on this subject, being confined to the difference that *now* exists, will not reach such future increase.*

From this analysis of the fourteenth and fifteenth articles we are the better enabled to perceive the truth of the following propositions:

1. As, for the purpose of encouraging or protecting the agriculture and manufactures of Great Britain, several of our productions, in common with similar productions of the other nations, are prohibited from being imported into the British ports in Europe, we are free, whenever our interest shall require it, also to exclude any of the productions of the British dominions from being imported into our ports, extending such exclusions, as they do, to the like manufactures and productions of foreign nations.

Should that part of the twelfth article, which has not been ratified, in its modification retain the stipulation relative to the importation of coffee, sugar, and the other productions of the West Indies, it would constitute an exception to this proposition. But as the West India productions are dissimilar to those of our own country, they would not fall within the reason of these prohibitions, and, therefore, the exception would be of no consequence.

2. As, for the like reasons, some of our productions are subject, in common with the like productions of

* How ridiculous, then, the argument, if the basis of it were otherwise true, that the treaty, by tying up the Government from future discrimination, has prostrated our navigation before Great Britain! Can a restraint which is only to operate the short term of two years after the termination of the present war, have the mighty effect of sacrificing our navigation?

other nations. to high or prohibitory duties in the British ports in Europe. we are free, likewise, to impose similar duties on any of the productions or manufactures of the British dominions, extending such duties, as they do, to the like productions and manufactures of other foreign nations.

3. As the navigation act of Great Britain, in order to extend their own shipping, has heretofore confined the importation of foreign productions into the British ports to British ships, and to the ships of the country producing the same; the fifteenth article [appears] to contain an important innovation on this celebrated act, inasmuch as [by the most obvious construction of the terms] it gives us a right to import from our own territories into the British ports in Europe every article and description of goods and merchandises which any nation in their own ships is allowed to import. In consequence whereof, while all other foreign nations are prohibited and restrained from importing in their own vessels into Great Britain any goods or merchandises, except those of their own particular growth, produce, or manufacture, we, by the treaty, have a right to carry from our ports to the British ports in Europe, not only goods and merchandises of our own growth, produce, or manufacture, but also such goods and merchandises, the growth, produce, or manufacture of any foreign nation, as a nation producing or manufacturing the same would import in their vessels into Great Britain.

4. Should it ever be politic to exclude all foreign vessels from importing or exporting any species of goods, wares, or merchandises, by confining their

importation or exportation to our own vessels, we are perfectly free to do so; with the exception, relative to the West India productions, referred to under the first proposition. Thus, for example, we may prohibit the importation of all Asiatic goods, except in American bottoms.

That these articles of the treaty leave our navigation and commerce as free, and secure to us as extensive advantages as have before been procured by our commercial treaties with foreign nations, will be seen by the following comparison:

1. By the articles before us, the parties restrain themselves from imposing any other or higher duties on the vessels and cargoes of each other, than they impose on the vessels and cargoes of all other nations; and also from imposing a prohibition of the importation or exportation of any article to or from the territories of each other, which shall not extend to all other nations. By the third and fourth articles of our treaty with France, and by the second and third articles of our treaty with Prussia, it is stipulated, that the subjects and citizens of the respective parties shall pay, in the ports, havens, and places of each other, no other or greater duties or imposts, of whatsoever nature they may be, than those which the nations most favored shall be obliged to pay; and, moreover, that they shall enjoy all the rights, liberties, privileges, and exemptions in trade, navigation, and commerce, which the said nations do or shall enjoy. And by the second article of the former and the twenty-sixth article of the latter treaty, the parties agree mutually, not to grant any particular favor, in respect to navigation or commerce,

which shall not immediately become common to the other party, who shall enjoy the same favor, if freely granted, or on allowing the same compensation, if the concession was conditional.

The stipulations in the three treaties are, on these points, equivalent.

The second and third articles of our treaty with Holland, and the third and fourth of our treaty with Sweden, likewise contain mutual stipulations, that the subjects and citizens of the several parties shall pay in the ports, havens, and places of their respective countries, no other or higher duties or imposts than those which the nations most favored shall pay; and that they shall enjoy all the rights, liberties, privileges, and exemptions in trade and navigation which the said nations shall enjoy.

2. The articles before us, after stipulating that there shall be, between our territories and the British dominions in Europe, a reciprocal and perfect liberty of commerce, declare that the same shall be subject always to the laws of the respective countries. The introductory articles of our treaties with France, Holland, and Sweden, after asserting the intentions of the parties to take equality and reciprocity as their basis, likewise leave each party at liberty to form such regulations respecting commerce and navigation as it shall find convenient to itself; and the second and third articles of our treaty with Prussia, after stipulating the rights of the parties, respecting the duties and imposts, and the freedom of their navigation and trade, likewise require their submission to the laws and usages established in the two countries.

3. The articles before us, in their provisions relative

to navigation, stipulate, as has been already observed, in common with our other treaties, that the ships of the parties shall not be subject to higher or other duties than those paid by all other nations. They go further, and agree to vary this rule, so far as shall be necessary to equalize the tonnage duty imposed by the parties on the ships of each other. Our treaty with France is the only one in which we discover a similar stipulation. France had a high alien tonnage duty on all foreign vessels transporting the merchandise of France from one port to another port in her dominions. We had a less alien tonnage duty on foreign ships employed in a similar trade. Though not equally extensive, the case is parallel to that which exists between us and Great Britain. We have a high alien tonnage duty on all foreign vessels entering our ports; Great Britain has a less alien tonnage duty on foreign vessels entering her ports. In our treaty with France we reserve a right to countervail the alien tonnage duty imposed by France; and in like manner, in our treaty with Great Britain, she reserves a right to countervail the alien tonnage duty imposed by us. The object, in both instances, has been to place the navigation of the parties on the footing of exact equality.

The preceding exposition of these articles, illustrated by the comparison of their provisions with the analogous articles of our other treaties, would be sufficient to vindicate them against the objections to which they have been exposed. It is, however, thought advisable to take notice of such of these objections as are likely to have any influence on the public opinion.—[This will be done in a subsequent number.]

CAMILLUS.

NO. XXVIII.

1795.

An extraordinary construction of the last clause of the fourteenth article has been assumed by the writer of Cato; his mistake in this instance has been the foundation of many of the errors with which that performance abounds. The article stipulates that there shall be a perfect and reciprocal liberty of navigation and commerce between our territories and those of Great Britain in Europe, subject *always* to the laws and statutes of the two countries, respectively. This navigation and commerce, says Cato, must be subject to, and defined and regulated by, the laws and statutes of the two countries which existed at the time of making the treaty; all future laws, that either party might be disposed to make, relative to the same, being excluded.

The reason assigned in support of this interpretation is, that the article would be nugatory, did not the laws and statutes alluded to mean only those in existence at the making of the treaty, since future laws might impair or destroy what the article confers.

Nothing in the expressions themselves requires this interpretation.

The customary and established meaning of them in other treaties would lead to a rejection of it. The object of the clause is not the limitation of the legislative power of the parties, but the subjection of their mutual navigation and commerce to their respective laws. This end is most fully attained by understanding the parties to mean their future as well as their existing laws. Besides, the interpretation must be such as will not destroy the use and meaning of other parts of the

treaty. If this construction is just, some of the most important stipulations of the fifteenth article would really become useless. For instance, if the laws, existing at the time of making the treaty are alone to prevail, the articles of commerce, admitted or excluded by those laws, must remain entitled to admission or liable to exclusion. Why then say in the fifteenth article "that no prohibition *shall be imposed* on the exportation or importation of any articles to or from the territories of the parties respectively, which shall not extend to all other nations?" If a prohibition, applying to all foreign nations, may be imposed (as the clause allows), this would be a new or subsequent law, varying the law existing at the time of making the treaty, and consequently defeating the construction in question.

The reason adduced by Cato to support his construction is equally defective with his interpretation itself. The fourteenth article is in general terms, and similar, as has been shown, to the introductory articles of other treaties; so far from the last clause thereof being capable of destroying the preceding stipulations, it is the peculiar province of the next article to ascertain the points which the parties mutually agree to except from their legislative power. In all cases not thus excepted, the navigation and commerce of the parties is subject to their existing or future laws.

It is not necessary to remark on the several objections which have proceeded from the opinion that the treaty restrains us from imposing prohibitory duties and exclusions; they are but subdivisions of the error that has been just combated.

Another objection which has been stated by several writers, and much labored by Cato, is that, under the right reserved to the British Government to countervail an alien tonnage duty, by the imposition of an equivalent one on our vessels entering their ports, they would gain and we should lose.

Several methods are adopted to prove this opinion. The observation that we have a tonnage duty on our own vessels, and that Great Britain has none, is repeated by way of objection against this as well as against the proposed adjustment contained in the twelfth article. The same reply already given might be sufficient in this place.

But [is it true] that British ships entering their own ports in Europe are wholly free from a tonnage duty? The contrary is the fact; since it is understood that they pay a tonnage duty for the support of light-houses, and some other institutions, connected with their navigation, which [in all their ports*] exceeds the tonnage duty of six cents per ton, that we levy on the entry of our own vessels employed in foreign trade. But Great Britain (it is alleged) will not only impose, in virtue of this reserved right, fifty cents per ton on our vessels entering her ports, but in every port except that of London she will furthermore exact one shilling and ninepence sterling, or thirty-nine cents per ton, for light-money and Trinity-dues, more than is paid by her own vessels; this, added to the difference before stated, would have, it is said, a very discouraging effect upon our navigation. Our tonnage duty is a tax not divided and appropriated, like the light-money or

* Unless London be an exception.

Trinity-dues in Great Britain, to specific and particular objects, but when levied, goes into the treasury with the duty of impost, and stands appropriated to the various objects to which that duty is appropriated. Among those objects is the support of light-houses. It is not the object to which the tax is applied that gives a denomination; whether it goes to support the civil list, or to pay annuities, or to maintain light-houses, or to support hospitals, it is equally a tonnage duty. A tonnage duty, then, of a certain amount, is now paid by American vessels entering the ports of Great Britain. This duty is not uniform, being less in London than in the other ports, and, in some instances, less than the tonnage duty paid by British ships entering our ports. The object of this clause (8th of the 15th article) is to equalize the alien tonnage duties of the parties. Hence the reservation of a right to the British Government to impose on our vessels entering their ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in our ports. It would be against the manifest views of the parties, as well as against the explicit terms of the articles, to impose a tonnage duty (whether for light-money, Trinity-dues, or any other purpose) which should exceed that which shall be payable by British vessels in our ports.

The right reserved is expressly to impose on our vessels an equal, not a greater tonnage duty than we shall impose on their vessels. This objection, therefore, must be abandoned.

But again, it is urged that our navigation, should it weather Scylla, must perish on Charybdis; for we are gravely told by Cato that, under the right reserved to

the British Government to impose such duty as may be sufficient to countervail, or, which is equivalent, to balance the difference of duty payable on the importation into our ports of Asiatic or European goods by American or by British vessels, our ships will be thrown out of the trade with the British European dominions; because, under this right, the British Government will impose a duty on our productions carried to their ports in our own ships equal to the whole duty payable on the goods and merchandises imported into our ports by British ships; and as the goods and merchandises which we receive from them exceed in value those that they receive from us by one third, and as the duty to be countervailed is at least ten per cent. ad valorem on the goods received from them, the consequence will be, that the countervailing duty must amount to fifteen per cent. on the value of all our productions carried in our own ships to the British ports in Europe, while the same will be free in British ships. A more extravagant construction,* or an argument more inaccurately formed, can scarcely be imagined.

The countervailing right is not applicable to the whole duty payable on goods and merchandises imported into our ports in British ships, but expressly confined to the difference of duty now payable on the same when imported by American or by British vessels. This difference is one tenth part of the duty upon all European goods—that is to say, these goods pay one tenth part more duty when imported in British vessels than is paid on the same when imported in an Ameri-

* [If I mistake not, the assertion of Cato, as to the *whole duty*, has been retracted; but the residue of his error on this point remains unrecalled.]

can vessel. In all cases, therefore, where our impost is ten per cent. ad valorem, the difference of duty to be countervailed amounts to only one per cent. on the value of the goods, instead of ten per cent., as is alleged by Cato; in the instance of teas imported from Europe the difference is greater. Again, it is not an aggregate sum that is to be apportioned under this countervailing right, for this sum would be liable to constant variation, according to the quantity and species of goods imported into our ports from time to time by British vessels; and besides, the British Government possess no means whereby the amount thereof could be ascertained.

Cato feels and admits the force of these remarks as decisive against an average duty, without perceiving that they possess equal strength against his project of countervailing the whole duty paid on the importation of goods and merchandises into our ports by British vessels; for the same variation in the amount, and the same want of the means to ascertain it, will operate in both cases. The reasons which he himself employs to prove that an average duty cannot be ascertained, equally show the impracticability of the method which he considers as the one that will be employed in the execution of the countervailing right reserved to the British Government. It has before been stated that the natural, as well as the equitable, mode of executing this power will be to impose a duty on the goods imported by us from their European ports exactly the same as makes the difference of duty on the importation thereof into our ports by American or by British vessels.

Admitting that the execution of the countervailing

right reserved to Great Britain will do no more than place the navigation of the parties on an equal footing in their mutual intercourse, still we are told that for this, likewise, the treaty is blamable, because even equality will be such an advantage to our rival, that we shall be unable to maintain the competition.

This objection brings with it a quality rarely to be discovered in the opinions of the cavillers against the treaty. Their usual error is a false and magnified estimate of the comparative resources, strength, and importance of our country; in this instance, shifting their ground, they fall into the opposite extreme, and contend for our inferiority in a branch of business in the prosecution of which we are unquestionably able to meet a fair competition with any nation.

With what propriety could we have proposed or expected an adjustment of our intercourse by which our vessels should have been placed on a better footing than those of the other party? As the trade was mutually beneficial, why could we, more than Great Britain, ask for an arrangement that should subject our rival to comparatively heavier burdens? Does any considerate man believe, that it would have been proper for us to ask, or that there is the least probability that Great Britain would have acceded to, an arrangement on the subject of our mutual navigation, that should have secured to us advantages denied to them? To place the navigation of the parties on an equal footing, was all that could be rationally expected by either; and so far from such a settlement being injurious to us, the contrary has long been the opinion both here and in Great Britain. If it is true that we

are unable to maintain a competition with the British navigation, how are we to account for the jealousy [that is understood] to have shown itself on their part on this subject.

But the fact is otherwise—British ships cannot be built and equipped as cheap as American ships, nor are they victualled and manned* on as good terms. Our country abounds with excellent materials for ship-building. Great Britain is in a great measure dependent upon other countries for a supply of them. The materials for the construction of ships are much cheaper in America than in Great Britain; and intelligent characters in Great Britain as well as in America have affirmed, that an American merchant-ship of any given burthen can be built and equipped for sea one third cheaper than a British, Dutch, or French ship of equal goodness. Mr. Coxe informs us, that the cost of an American ship, built of our live oak and cedar, is from 36 to 38 dollars per ton, completely finished; while an oak ship in the cheapest part of England, France, or Holland, fitted in the same manner, will cost from 55 to 60 dollars per ton. The capital employed on the American merchantmen is therefore one third less on any given amount of tonnage than that employed in the same amount of British tonnage; or the money requisite to build and equip for sea two British merchant-ships, will be sufficient to build and equip for sea three American merchant-ships of the same burthen and of equal goodness. It is not only the difference in the first cost, but to this should be added the difference

* [In the comparison in this particular, we must combine the *number* of hands with the terms of compensation according to which the vessels of the two countries are navigated.]

of interest and insurance, the annual amount whereof is ascertained by the value of the ships.

If we add to this the comparative advantages that we possess in victualling and manning our vessels, independent of the acknowledged and distinguished skill and enterprise of our seamen, it may be safely affirmed, that no American who knows the character of his countrymen, and who is not ignorant of our peculiar resources for ship-building, will doubt our superiority in an equal and fair competition with any other nation.

It is further alleged, that the treaty wants reciprocity, inasmuch as the whole territory of the United States is laid open to the British navigation and commerce, while in return, the British territories, *in Europe only*, are open to us. The short answer to this allegation is, that it is not true. All the British territories in Europe are laid open to us; all their territories in Asia are also opened to us; the treaty likewise opened all their territories in the West Indies. The article relative to this branch of trade, as has already been observed, is excepted from the ratification of the treaty, and made the subject of future negotiation. The British territories on our continent, that of the Hudson's Bay Company excepted, are also opened to us in like manner as ours are opened to them. The intercourse is confined on both sides to the interior communications, the inhabitants of those colonies being equally destitute of a right to resort, by sea, with their ships to our ports and harbors, as we are of the right to resort, by sea, with our ships to their ports and harbors.

The territory of the Hudson's Bay Company, the island of Newfoundland, and the establishments on the coast of Africa, are the only British dominions to which the treaty, in its original form, does not give a right of intercourse and trade.

The settlement in the Bay of Honduras is on Spanish lands, and the right of precedence is conceded for specified objects, beyond which the Spanish Government are vigilant to restrain the settlers.

Spain may possibly be induced to allow us a right in common with Great Britain to cut mahogany and dye-woods in this region; but Great Britain cannot, consistently with her convention with Spain, share with us the privilege that she enjoys.

Newfoundland is a mere establishment for the British fisheries. The African trade has been, and might hereafter be, pursued, if our humanity and the force of public opinion did not impede it, without procuring a right to resort to the British ports in that quarter; and in respect to the unsettled territory of the Hudson's Bay Company, about which so much has been noticed and written, it is of no sort of importance, except in a small Indian trade that employs two or three annual ships, which arrive there in August and escape in September; besides that, this trade belongs to a company who possess a right to the exclusive enjoyment of it even against their fellow-citizens. It is finally alleged that the treaty will bind up and restrain our Government from making more specific and beneficial treaties of commerce with other nations.

Those who urge this objection have generally placed great reliance on another objection, which asserts that

the treaty with Great Britain violates the Constitution, because it amounts to a regulation of commerce, the power to regulate which is vested in Congress and not in the Executive. Yet these very characters, in the next breath, maintain that the treaty is bad, because it precludes our Executive government (for no other power can make treaties) from making more minute and beneficial commercial treaties with other nations. If these observations can be reconciled, it must be thus: the Constitution does not authorize the Executive, with the aid of the Senate, to make a commercial treaty with Great Britain, having vested in Congress the power to regulate the trade between us and that nation; but it allows the Executive to make commercial treaties with any other nation, which may establish the most material and minute commercial and revenue laws, without affecting the power vested in Congress to regulate trade. That we may have characters among us sufficiently intemperate to wish that such was the Constitution, I am not prepared to deny; but that such a construction can be made out, yet remains to be proved.

The objection, as usual, is made in a loose and inaccurate manner; literally interpreted, we should infer that the treaty contained an article, whereby we had agreed with Great Britain that we would not form any future treaties of commerce with any nation; but no such stipulation exists.

Is it meant by the objection to be alleged that we can form no commercial treaty, whereby, for an advantage yielded on our part, we may acquire a privilege in return, unless we yield the same advantage to Great Britain gratuitously and without receiving from her the equivalent?

Admitting the truth of this objection, it might be replied: So, on the other hand, Great Britain can form no commercial treaty, whereby, for an advantage yielded on her part, she may acquire some privilege in return, unless she yields the same advantage to us gratuitously and without receiving from us the equivalent; and as Great Britain, whose commercial relations are equally extensive with ours, and whose capital far exceeds ours, is equally restrained on this point, our chance of gain would be fully equal to our chance of loss.

But the allegation is not generally true, and the objection, when examined, will be found to be of little weight, even with those who may imagine that nations do sometimes make good bargains by the purchase of privileges and exemptions in their foreign trade. The case that has been chosen to enforce the objection, shall be employed to invalidate it.

Admit that the treaty with Great Britain is in operation; that the oil and provision merchants of the United States, and the wine and brandy merchants of France are desirous of a treaty between the two countries, whereby those commodities shall be received from each other on low duties or freely; admit further, that the governments of the two nations are disposed to make such a treaty (this is the case again put by the opposers of the treaty as impracticable), what will restrain the conclusion of this treaty? The disadvantage that will arise from our treaty with Great Britain? No; for Britain produces neither wines, nor brandy made from wines, with which she could supply us; she therefore could gain nothing, nor should we lose any thing, by

the conclusion of such a treaty. All that will be requisite, therefore, in the formation of such treaties, will be to choose for the purpose such articles of the growth, manufacture, or produce of any country with whom we desire to treat, as are not common to it and the British dominions, and any skilful merchant will quickly make the selection. Hence it appears that the objection is not well founded in point of fact.

But though it may be practicable, will it be politic in us to conclude no commercial treaties of this character with any nation? If we resort to precedents as guides, we shall discover few, the history of which would encourage us. Indeed, they are a description of conventions not often formed between nations.

They are of difficult adjustment, and necessarily increase the provisions of the commercial code, sufficiently intricate, when only one rule prevails in respect to all nations. Besides, however perfect may be the right of nations in this respect, yet, when the productions of one nation are received at lower duties than the like productions of another, the discrimination will scarcely fail to awaken desires and to produce dissatisfaction from their disappointment.

Again, unless we are prepared, at the expense of the whole, to procure advantages or privileges for a part of the community, we shall doubt the policy of such stipulations. Between two manufacturing nations, in each of which the manufactures have attained to great perfection, a tariff of duties may be established by treaties, in the payment of which the manufactures of the two countries might be freely exchanged and mutually confirmed; such was the commercial treaty

between France and Great Britain in the year 1786. But the subject was so intricate and involved such a variety of apparently independent circumstances, such as the price of provisions, the amount and the manner of levying of the taxes, and the price of the raw materials employed in their respective manufactures, that neither part felt entire confidence in the equity and reciprocity of the treaty; and with all the skill in negotiation, that France in a superior degree has been supposed to have possessed, the opinion of that nation has finally been, that the treaty was burdensome and disadvantageous to them.

We have another specimen of this species of treaty in a short convention between England and Portugal, concluded in 1703. The object was to procure a favorable market for dissimilar commodities, and such as were not the common production of the two countries. But this treaty, which has been so much applauded, is essentially defective in point of reciprocity. England agrees to admit the wine of Portugal on payment of two thirds of the duty that shall be payable on French wines; and in return, Portugal agrees not to prohibit the English woollens. She does not agree to receive them exclusively of the woollens of other countries, nor to admit them on payment of lower duties. The advantage, therefore, is manifestly on the side of Portugal. By the treaty of commerce between France and Great Britain, concluded in 1786, it was agreed, that the wines of France imported into Great Britain should pay no higher duties than those which the wines of Portugal then paid. The consequence must have been a reduction, without compensation or

equivalent from Portugal, of the existing duties on the wines of that country brought into Great Britain, equal to one third of the amount of such duties. This is an instance of inconvenience and loss, resulting from the species of treaties, which it is alleged as an objection to the treaty concluded between us and Great Britain, that we are prevented by it from making with other nations.

A small compact nation, likewise, who excel in some one species of manufacture that is established throughout their territory, and in the conducting and success whereof there is a common interest, may find it useful to procure the exclusive supply of some foreign market; provided, in this as in all other bargains, the compensation shall not be too high. But in a nation like ours, composed of different States, varying in climate, productions, manufactures, and commercial pursuits, it will be more difficult to enter into treaties of this kind. Should Great Britain, for example, be inclined to admit our fish-oils freely, or on payment of low duties, on condition that we would receive their woollens or hardware freely, or on payment of low duties, would the Middle and Southern States be satisfied with such a treaty?—would they agree to a tax on their estates sufficient to supply the deficiency in the revenue arising from the relinquishment of the impost on British woollens or hardware? Would it not be said that such a tax was a bounty out of the common treasury, on a particular branch of business pursued alone by a portion of the citizens of a single State in the Union? Instances might be multiplied in the illustration of this subject; but they will readily

occur to every man who will pursue a little detail in his reflections. We have once made an experiment of this kind; its fate should serve as a caution to us in future. By the eleventh and twelfth articles of our treaty with France, it was agreed that France should never impose any duty on the molasses that we should import from the French West Indies; and in compensation of this exemption, that we should never impose any duty on the exportation of any kind of merchandise by Frenchmen, from our territories, for the use of the French West Indies. These articles produced much dissatisfaction in Congress: it was said to be a benefit that would enure to the use and advantage of only a part, but which must be compensated by the whole. Those arguments which will show themselves in future, should similar conventions be formed, were displayed on this occasion. The treaty was ratified; Congress applied to the king of France to consent to annul these articles; this request was granted; and the articles were, by the several acts of the parties, annulled.

Not only the few instances of the existence of these treaties among the nations, added to the peculiar difficulties which we must meet in their formation, should lead us to doubt their utility, but also the opinion of our own country, which, if explicit on any point, has been repeatedly so in the condemnation of this species of national compact.

The introductory article of our commercial treaty with France asserts, that the parties willing to fix in an equitable and permanent manner the rules which ought to be followed relative to their correspondence and commerce "have judged that the said end could not

be better obtained than by taking for the basis of their agreement the most perfect equality and reciprocity, and by carefully avoiding all those burdensome preferences which are usually sources of debate, embarrassment, and discontent."

The same language is employed in our subsequent treaties with Holland and with Sweden; the public voice is unequivocal on this subject.

On the whole, the more closely this question is examined the more doubtful will the policy appear of our entering into treaties of this description. We shall have to encounter not only the intrinsic difficulties that always attend a fair and precise adjustment of the equivalents, together with the national discontents that proceed from errors on this point; but, moreover, a still greater embarrassment from the circumstance that our great staple exports are not the common productions of the whole Union, but different articles are peculiar to different parts thereof. If, notwithstanding, our Government shall discover an instance in which, consistent with the common interest and sound policy, such a treaty might be desirable, we have scope sufficient to form it without incurring loss or disadvantage by the operation of our treaty with Great Britain.

CAMILLUS.

NO. XXIX.

1795.

The sixteenth article is entirely conformable to the usage and custom of nations. The exchange of consuls had already taken place between us and Great Britain; and their functions and privileges being left to the

definition of the law of nations, we shall be exempt from those unpleasant controversies that too often arise from special conventions, which enlarge the consular privileges, power, and jurisdiction.

The agreement that either party may punish, dismiss, or send back a consul for illegal or improper conduct, is calculated to prevent national misunderstandings, and to secure a respectful deportment in the consular corps. I have not observed that this article has been disapproved of from any quarter.

The seventeenth article, which respects the capture and detention of the vessels of the parties on just suspicion of having on board enemy's property, or contraband of war, has been the object of intemperate censure —with how much justice it shall be the business of this paper to examine.

The principal complaint is, not that the article exposed our own property to loss by capture, for this is not the case, but that it does not protect enemy's property on board our vessels. The defence of the article will rest upon the proofs which shall be exhibited, that it is in conformity with, and supported by, the clear and acknowledged law of nations—that law which pronounces that enemy's goods on the high seas are liable to capture, and as a necessary means to this end, that neutral ships are there liable to examination or search.

The law of nature (as heretofore observed), applicable to individuals in their independent or unsocial state, is what, when applied to collections of individuals in society, constitutes the natural or necessary law of nations. An individual in a state of nature, for repara-

tion of injuries, or in defence of his person and property, has a right to seize the property of his enemy, and to destroy his person.

Nations always succeed to the rights that the individuals who composed them enjoy in a state of nature ; and hence it is that by the law of nations, from the earliest annals of society, the goods or property of one enemy have been considered as liable to be seized and applied to the use of another. This right must be so used as not to injure the rights of others ; subject to this limitation, it is perfect, and an interruption of it by another is an injury. As in a contest between two individuals in a state of nature, no third has a right, without becoming a party in the controversy, to protect the property or defend the person of either of the parties : so in a war between two nations, no third nation can act out of its own jurisdiction, consistent with the duties of neutrality ; or, without becoming a party in the war, protect the property of, or defend, either of the parties. Though nations are, in respect to each other, like individuals in a state of nature, the resemblance is not in every particular perfect. Individuals in a state of nature have not only the inferior dominion or private ownership of property, but the entire and perfect dominion over it. In society the latter right belongs exclusively to the nation, while the former belongs to the several members that compose it. Immovable things, such as lands, which are denominated the territory of a nation, are the immediate and special objects of this perfect dominion or paramount property. Movable things are the proper objects of inferior dominion or private ownership, and

are not otherwise the objects of the national or paramount property than as they happen to be within its territorial limits. The perfect dominion or jurisdiction of a nation, in respect to property, extends over, and is bounded by, the lands thereof and the waters appurtenant to the same.

As soon, therefore, as movable things pass out of these limits, they cease to be under the dominion or jurisdiction of the nation, the private property of whose members they may be.

This private property, in movable things, may be enjoyed within the territory of a nation, by those who are not members thereof. Hence in a war between two nations, a member of one of which owns movables within the territory of a third or neutral nation, such movables or property are not liable to seizure by reason of the war; because, being within and under the exclusive jurisdiction of a third nation, it would be an injury to the right of such nation to go there and seize the same. So long as such movables remain within a foreign territory, they are objects of its dominion and protection; but as soon as they are carried out of the same, they cease to be any longer under its jurisdiction or protection.

In a war between two nations, all the members of each are enemies to the other, and all the property of the several members, as well as the strictly national property, is liable to seizure. In general the character of the owner, whether enemy or friend, decides whether property is liable to capture by reason of war; but the validity of the capture depends not only on the goods being enemy's property, but likewise on the fact that

the place of capture is one in which the right may be exercised without injury to the rights of a neutral nation. Hence the property of an enemy is liable to capture only within the respective territories or jurisdiction of the belligerent nations, or in a place not within the territory or jurisdiction of any nation. In either of these places the right may be exercised without injury to the rights of neutral nations. The limitation of this right, so far as respects enemy's property found within the territory of one of the parties on the breaking out of war, has before been discussed, and placed, I flatter myself, on solid principles.

The main ocean not being within the territory or subject to the exclusive dominion of any nation, is a place where enemy goods may lawfully be captured. An impediment by any third nation to the exercise of the right of capture on the ocean by either of the belligerent parties, would be an injury.

As the goods of an enemy, within the territory of a neutral state, are under the protection thereof, the law of nations, for the reasons that have been stated, will not permit us to take them ; in like manner, we have no right to take them if they are on board a ship, whilst the ship is in a neutral port, whether the ship itself is a neutral one, or belongs to an enemy, because the port is a part of the territory. When the goods of an enemy are on board the ship of an enemy, and the ship is in the main ocean, there is no doubt of our right to capture both the goods and the ship, because they are then in a place which is not the territory of any nation. But when the goods of an enemy are on board a neutral ship, and the ship is in the main ocean, though we

have a right to take the goods, we have no right to take the ship, or to detain her any longer than is necessary to obtain possession of the goods ; for the ocean itself is no territory, and neutral ships, as they are movable goods, can not be parts of the neutral territory, and consequently are no more under the protection of the neutral state than the same goods would be if they were passing through an unoccupied country in neutral carriages or on neutral horses.

A neutral ship (says Rutherford in his Institutes, whose reasoning on this question I adopt) may indeed be called a *neutral place ;* but when we call it so, the word *place* does not mean territory, it only means the thing in which the goods are contained. Though the goods of the enemy had been on board a ship belonging to the enemy, we might have said, in the same sense, that they were in a neutral place, if they had been locked up there in a neutral chest. But no one would imagine that such a neutral place, as a chest, can be considered as a part of the territory of the neutral state, or that it would protect the goods. Notwithstanding, a neutral chest is as much a neutral place as a neutral ship.

A ship, though a movable thing, is under the jurisdiction of a nation whilst it continues in one of its ports ; but as soon as it is out at sea, only the private ownership, or inferior dominion, of the ship remains, and it ceases to be under the dominion or jurisdiction of the nation. The case will be the same if, instead of supposing the ship to be the property of a merchant, we suppose it to be the property of the nation.

For though we cannot well call the property which

the nation has in such a ship by the name of private ownership, yet, when the ship comes into the main ocean, the jurisdiction or paramount property ceases, and the right that remains is an inferior kind of property, which has the nature of private ownership. If the jurisdiction which a neutral state has over the ships of its members, or even over its own ships, ceases when the ships are out at sea, the goods of an enemy, that are on board such ships, cannot be under the protection of the nation in the same manner as if the ships had been in one of its ports, or as if the goods had been on its land. *

Notwithstanding a neutral nation, when its ship is in the main ocean, has no jurisdiction over the ship itself, as if it was a part of its territory, yet the nation, or some of its members, which is the same thing, will continue to have the inferior sort of property or ownership in it. This species of property will protect the ship from capture, though the enemy's goods on board her may lawfully be taken.

But here a difficulty occurs. This inferior kind of property, called private ownership, to distinguish it from the jurisdiction over things, is an exclusive right; those who have such ownership in things, whether private or public persons, have a right to exclude all others from making use of such things; and by this means, the rights of others are often hindered from taking effect.

Wild beasts, birds, and fishes are, till they are

* [The jurisdiction here spoken of is relative to property, and altogether distinct from what is termed personal jurisdiction, which respects the relations between the society and its members. This latter species of jurisdiction is not confined to the territorial limits of a nation.]

catched, in common to all mankind; and I, in common with others, have a right to take them, and thereby to make them my own. But I cannot hunt, or shoot, or fish, without perhaps sometimes using the soil or water of another man; and as I have no right to use these without his consent, he may justly hinder me from doing any of these acts, as far as his right of property extends. Thus by private ownership I am prevented from taking such things as I should otherwise have a right to take, if they did not happen to be in such places as he had an exclusive right to. In like manner, though I have a right to take the goods of my enemy, when they are out at sea, yet may not the effect of this right be prevented by the inferior property or ownership which a neutral nation, or its members, have in the ship in which the goods are? If the law of nations is nothing but the law of nature applied to the collective persons of civil societies, instead of saying that the law of nations has decided otherwise, we should disclose a natural reason why it should determine otherwise. When I have merely a right to acquire property in a thing that is common to all mankind, but cannot do it without the use of what is already the property of some other man, this man neither does me an injury, nor encourages or protects others who have injured me, by excluding me from the use of what belongs to him. But when we have a right in war, upon account of the damage which the enemy has done us, to take goods of the enemy, and these are in a neutral ship, if the neutral state, though it has property in the ship, should make use of its right of property to protect the goods against us, this protection makes it an accessory to the

injury, which is the foundation of the claim upon the enemy to obtain reparation of damages, and consequently is inconsistent with the notion of neutrality.

But whilst this answer removes one difficulty, it brings another. If a neutral nation makes itself accessory to the damages done by the enemy, by protecting such enemy's goods as she has a right to take for reparation of damages, when these goods are out at sea in one of its ships, why might not the same nation, without becoming in like manner an accessory, protect the same goods when the ship is in one of its ports, or when the goods are on land within its territory? A law of nations, which is natural as to the matter of it, and positive only as to the objects of it, will furnish an answer to this question.

Every State has, by universal acknowledgment and consent, by the law of nations, an exclusive jurisdiction over its own territory. As long, therefore, as a State keeps within its own territory, and exercises its jurisdiction there, the protection in question is not a violation of our rights; but when its ships are in the main ocean, as they are then in a place out of its territory, where, by the law of nations, it has no jurisdiction, this law will allow us to take notice of the protection which it gives to the goods of an enemy, and to consider it as an accessory to the damages done by the enemy, if it gives them protection.

In respect to the right of examination or search, if the end is lawful, and the examination or search a necessary mean to attain this end, the inference is inevitable, that the examination or search is likewise lawful.

If the question, whether enemy goods are seizable

on board a neutral ship, were really doubtful, yet the right to search neutral ships must be admitted for another reason. All agree that arms, ammunition, and other contraband articles may not be carried to an enemy by a neutral power; without searching vessels at sea, such supply could not be prevented. The right to search, therefore, results, likewise, from the right to seize contraband goods. Again, the state of war authorizes the capture of enemy's ships and goods; but on the main ocean, which is the great highway where the ships and goods of all nations pass, how are the ships and goods of an enemy to be distinguished from those of a friend? No other way than by examination and search. Hence, then, the right of search is deducible from the general right to capture the ships and goods of an enemy.

It would undoubtedly disembarrass the commerce of neutral nations were passports and ships' papers received, in all cases, as conclusive evidence of the quality and property of the cargo. And did treaties, in fact, effectually secure an exemption from rude and detrimental inquisitions upon the ocean, they would become objects of inestimable worth to the neutral powers. But, notwithstanding the existence of stipulations in our other treaties [which aim at giving some force to similar credentials], can it be said that our ships have been visited with less ceremony by one party than by the other? And may not the experience of other nations, as well as that of our own, be appealed to, in proof of the opinion, that these stipulations, however exact and positive, are too little regarded by that class of men, to restrain and govern whose conduct they are instituted?

The right of search ought to be used with moderation, and with as little inconvenience as possible to the rights of nations not engaged in the war. And the law of nations, on the other hand, requires the utmost good faith on the part of the neutral powers. They are bound not to conceal the property of the enemy, but, on the contrary, to disclose it when examination shall be made; in confidence of this impartiality, the law of nations obliges the powers at war to give credit to the certificates, bills of lading, and other instruments of ownership produced by the masters of neutral ships, unless any fraud appear in them, or *there be good reason for suspecting their validity.* The right of search is [always] at the peril of those who exercise it; the right, notwithstanding [must be acknowledged] to be indubitable.

The reasoning employed to prove that all neutral ships on the main ocean are liable to search, and enemy goods on board them to capture, is supported by the ablest writers on public law, and their decision is believed to be unanimously in its favor.

The Italian states were the first among modern nations who cultivated the interests of commerce, and before the passage of the Cape of Good Hope, Venice and Genoa distributed the manufactures of Asia throughout Europe. They, therefore, first defined the rights of navigation. Their maritime regulations are collected in a work called "Consolato del Mare"; I do not possess the collection, but find the following quotation from it in Grotius.*

"If both the ship and freight belong to the enemy, then, without dispute, they become lawful prize to the

* Grotius, Book III., Chap. I., Sec. 5, Note.

captor; but if the ship belong to those that be at peace with us, and the cargo be the enemy's, they may be forced by the powers at war, to put into any of their ports, and unlade; but yet the master must be *satisfied for the freight of them.*"

Grotius, that learned and persecuted friend of liberty, whose life and great talents were dedicated to the service of mankind, and who displayed so much ability and learning in defending the freedom of the seas and of commerce, is clearly of opinion that enemy goods are not protected by neutral bottoms; he even goes further, and allows that *such property* occasions great presumption that the vessel is, likewise, enemy property.* Bynkershoek is of the same opinion.† Puffendorf and Heinecius ‡ agree in this law; and Vatel, who is the latest writer, is explicit in his opinion. "Without searching neutral ships at sea," says he, "the commerce of contraband goods cannot be prevented—there is then a right of searching. Some powerful nations have, at different times, refused to submit to this. At present a neutral ship refusing to be searched would, from that proceeding alone, be condemned as lawful prize." "Effects belonging to an enemy, found on board a neutral ship, are seizable by the rights of war; but by the law of nature, the master is to be paid his freight, and not to suffer by the seizure. The effects of neutrals, found on board an enemy ship, are to be restored to the owners, against whom there is no right of confiscation."

Other authors of respectability might be quoted;

* Grotius, Book III., Chap. I., Sec. 8; Book III., Chap. VI., Sec. 6.

† Bynkershoek: "Quest. Jur. Pub.," lib. i, cap. 13 and 14.

‡ Heinecius: "De Navibus," cap. 2, sect. 114, 115, 116.

but those already named will be acknowledged as the ablest, and their authority the most decisive of any that can be cited. So strong, clear, and uninterrupted, are the authorities of the writers on public law in relation to these points, that the advocates of an opposite rule may be challenged to produce a single authority of approved respectability in support of their opinion.*

CAMILLUS.

NO. XXX.

1795.

Admitting that it was the law of nations that enemy's goods might be seized in neutral ships, it is alleged by Cato and other writers, who have appeared on the same side, that the treaties which have been formed between nations have annulled this law, and established another in its stead, equally extensive and binding on the whole civilized world.

In discussing this allegation, we should remember that all nations are in a state of equality, and independent of each other. No law, other than the necessary or natural law of nations, is binding on any nation without its consent, expressly or tacitly given. A law among nations cannot, like a civil or municipal law, be annulled, or enacted by a majority, or any portion short of the whole. By agreement between two or more nations, the operation of a law already in existence may be suspended so far as respects themselves; but such agreement works no change of such law, in relation to

* This subject will be resumed and pursued under different aspects in another number.

the rights or duties of other nations. The same is true of any rule of action established by convention between two nations; such rule is obligatory on the parties that form the contract, but is wholly without effect and nugatory in respect to all other nations. Unless, then, all nations have concurred in the design to annul this law, it must still exist; and treaties containing opposite stipulations can be considered in no other light than as exceptions to the same, in which certain nations have seen it their interest to agree.

Though one nation may have agreed with another to suspend the operation of this law, and to substitute the rule that free ships make free goods, and enemy ships enemy goods, there may have been some peculiar reason that induced the parties to form this convention with each other, that would not apply in respect to any other nation.

A nation may advance its interest perhaps by forming such a treaty with one nation, and injure it by forming it with another. Because a nation has, in some instances, or for a limited time, formed stipulations of this sort, it cannot from thence be inferred that it has thereby, in any sense, expressed its consent to a total repeal of a law, the operation of which it has agreed to suspend only for a limited time, and in respect to a particular nation. Commercial treaties, in which we discover these stipulations, though not always, are commonly limited in their duration. This limitation is a strong argument against the doctrine which these treaties are cited to establish. For so many years, say the parties, we will suspend the operation of the law. When the treaty expires by its proper limitation, or is

dissolved by war, the rule of the treaty ceases, and the law is again in force between the parties, and prescribes to them, in common with other nations, their rights and duties in this respect.

The law of nations, that authorizes the capture of enemy goods in neutral ships, requires the restoration of neutral goods captured in enemy ships; the treaties, which stipulate that free ships make free goods, stipulate also that enemy ships make enemy goods. I have discovered no instance of the former stipulation that has not been accompanied by the latter; though I have found instances of the latter stipulation unaccompanied by the former. This is the case in the treaty of peace, commerce, and alliance between Spain and England, concluded at Madrid, in 1667. Those, therefore, who contend that the law of nations has been repealed in one instance, must also insist that it has been repealed in the other. If the number of stipulations is to be received as evidence, the proof is stronger of a repeal in the latter than in the former case. But will any one seriously maintain, that a nation would have a right to confiscate the goods of a neutral power found on board an enemy ship, without an express stipulation on the part of such neutral state consenting to the same? Would England or Spain, for example, have a right to confiscate American property captured in a French ship? Would America, if at war, have a right to confiscate the neutral property of Spain, Portugal, Denmark, or Russia, found on board an enemy ship? Has any nation ever confiscated property under this circumstance? If not, the inference is clear, that these stip-

ulations are exclusively relative to the parties who form them, and that the rights of other states remain under the protection of the law of nations.

But, according to Cato, this reasoning may be just, yet inapplicable; for he maintains that *all nations* have consented to the establishment of this conventional law. "As far back as 150 years," says this writer, "and ever since, I find that the commercial nations have stipulated in their treaties, that free ships shall make free goods, that full credit shall be given to ships' papers, and that armed vessels shall not come within cannon shot of a neutral ship, but send their boats on board with only two or three men at most, to examine papers, but *not to search*, and that the treaties (by which is understood all the treaties) for 150 years back, relative to this object, are drawn in the words of the treaty between the United States and France."

Struck with the fulness of this assertion, I have carefully examined such collection of treaties as I have been able to procure, and going back to the year 1645, I have given a patient search to all the public conventions between Great Britain and the several powers of Europe since that period. I find that, since that epoch, Great Britain has concluded commercial treaties with Spain, Portugal, France, Holland, Dantzic, Denmark, Sweden, and Russia.

In the treaties with Holland and with France, she has agreed to the stipulation, that free ships shall make free goods, and enemy ships enemy goods. In *Chalmers'* collection of treaties, a similar stipulation

is contained in the 23d article of the treaty of alliance, concluded in 1564, between Oliver Cromwell and the king of Portugal; but in other collections in which that treaty is found, it does not contain a stipulation that free ships shall make free goods; and it has been denied, from a reputable quarter, on the part of Great Britain, that she has ever acceded to this principle, except in the instances of her treaties with Holland and France; neither of which exist any longer, the former having expired long since, and the latter being dissolved by the present war. Her treaties with Spain, Dantzic, Denmark, Sweden, and Russia, do neither of them contain this stipulation. On the contrary, the 12th article of the treaty with Sweden, and the 20th of the treaty with Denmark, each of which is now in force, and has been so for more than a century, as likewise the 14th article of the treaty with Dantzic, declares, that "lest the enemy's goods and merchandise should be concealed under the disguise of the goods of friends, it is stipulated, that all ships shall be furnished with passports and certificates, by which it shall be manifest to whom the articles, composing the cargoes, belong"; and the two first of these treaties, moreover, declare it "to be injurious to protect the property of enemies," and establish special guards to prevent the same.

In relation to the full credit to be given to ships' papers, and the manner of boarding neutral vessels,—in the treaties with Spain, France, and Holland, it is stipulated, that full faith shall be given to the passports, and that the boarding shall be by two or three men only. But the treaties with Portugal and Russia

are destitute of any stipulation on this subject, except that in the latter it is agreed,* that "the searching of merchant ships shall be as favorable as the reason of the war can possibly admit, toward the most favored neutral nation, observing, as near as may be, the principles of the law of nations that are generally acknowledged." In the treaties with Dantzic,† Denmark, and Sweden, passports are required for the purpose of distinguishing, according to the solemnities of those treaties, the enemy property on board the ships of the parties; and it is stipulated, that credit shall be given to such passports, except in cases of just and urgent cause of suspicion, when, say these treaties, the ship ought to be searched. An exception, that fully recognizes the right to search, essentially does away with the security intended by the passports. But neither of these treaties contain any regulation relative to the manner of boarding neutral vessels.

This research, though made with care, may have been imperfect; the result thereof is, that there are only two, possibly three, of these eight nations, with whom Great Britain has ever agreed to the stipulation, that free ships shall make free goods; only three of them with whom she has stipulated, that full credit shall be given to passports or ships' papers, or with whom the manner of boarding is settled. Instead, therefore, of that uniformity and universality in the stipulations in the commercial treaties, concluded within the last 150 years, so confidently asserted by Cato, we see that in five instances out of eight, of treaties concluded between Great Britain

* Treaty of 1776, article 10. † Treaty with Dantzic of 1706, article 20.

and the principal powers of Europe, within that term, they have on each of these points, given their sanction to a law directly in opposition to the assertion of this adventurous writer.

Yet, says Cato, "the principles of the armed neutrality, by the general consent of the great community of the civilized world, changed the law of nations." It is a singular logic that proves the agreement of nations by their disagreement, and their consent to a principle, by their drawing forth their fleet to dispute it. The armed neutrality, with those who understand its history, will not be relied on by way of proving a change in the law of nations, brought about by universal consent.

It will not be denied that this league, which was aimed principally against Great Britain, failed to accomplish its purpose, and that it expired with the American war. Nothing has been heard of it during the present war; and it is notorious, that Russia, and Holland before its conquest, were under agreements incompatible with the views of that association. The northern powers of Europe under the countenance of France, united to support the principles of the armed neutrality; but the league did not include all the neutral powers; and of the powers engaged in the war, at that period, Spain consented to observe the principles contended for by the confederacy, on condition that Great Britain would agree to them, who, so far from agreeing, openly resisted them.

On the same principle, by which it is contended that this association introduced a new law of nations, might the armed leagues between certain nations to

prohibit all commerce whatever with an enemy, be appealed to in proof of an alteration of the law of nations in this respect. England and Holland entered into such a league against France, in the year 1689; and other instances are mentioned by Grotius; yet no one has ever imagined that thereby any change was wrought in the law of nations.

The objection that has arisen from the dissimilarity between this article and those relative to the same subject in our other treaties, is equally defective with those already considered. The objection proceeds from an opinion that the law of nations has been changed, and that the stipulations in our other treaties are evidence thereof. The observations that have been offered on this subject are equally applicable to this objection, and it is therefore unnecessary to repeat them.

Not only reason, and the authority of jurists, but likewise the practice of nations, where they have been unrestrained by particular conventions, may be appealed to in support of this doctrine.

The practice of France, of Holland, even subsequent to particular stipulations, regulating this subject between themselves, has, in respect to other powers, been conformable to the law of nations. The ordinances and maritime decisions of France may be consulted to show what her practice has been, and that of Holland is evident by the convention of 1689, between her and England. The practice of Spain is understood to be the same; and in an instance that occurred during the American war, she carried the law to its utmost rigor, in assigning as a cause of

condemnation of a neutral Tuscan ship, her forcible resistance of the right of search. Her capture of American ships, during the present war, on suspicion of their cargoes being enemy property, affords additional evidence of her practice and opinions on this subject. In respect to Great Britain, from the general notoriety of the fact, it seems, in some sort, unnecessary to add, that she has immemorially adhered, in her general practice, to the law of nations in its widest interpretation on this subject. In a few instances, and perhaps for special reasons, as was the case in respect to the treaty with Holland, concluded in 1667, she has entered into opposite stipulations; but at this time, unless it may be with Portugal, Great Britain has no such treaty with any nation.

So undisputed was the law on this subject, and so uniform the practice of nations in cases not governed by a conventional rule, that Congress in the commencement and through the greater part of our revolution war, authorized our ships of war and privateers to capture enemy property on board neutral ships, and our admiralty courts uniformly restored neutral property found on board enemy ships. This practice continued years after the conclusion of our treaty with France, which contains a stipulation, that free ships shall make free goods, and enemy ships enemy goods; no person, during that period, having supposed that thereby the law was altered in respect to other nations.

Towards the close of the war, to favor the views of the armed neutrality, in which league the United States were not a party, but whose opposition to

Great Britain they naturally approved, Congress, in an ordinance on the subject of captures, ordained that neutral bottoms should protect enemy goods—but here they stopped. Thus far the authority was indubitable, because it was exercised only in abridgment of their own rights. Being engaged in war, they could not by their own act enlarge their rights, or abridge those of neutral ships; the extent of both being defined and settled by the public law of nations. They, therefore, never authorized the capture and condemnation of neutral goods found in enemy ships, nor could they have authorized the same, without a manifest violation of the rights of the neutral powers.

It is finally alleged that the article, if sound in its principles, is defective in those provisions which are requisite to protect and secure the neutral rights of the parties; inasmuch as it does not contain an explicit stipulation for the payment of freight on enemy goods, nor for the payment of damages for the detention or loss of neutral ships taken without just cause. I do not recollect to have met with any precise stipulation on these points, in the commercial treaties between other nations. None such, if my recollection be right, are found in any of our other treaties; and I think it would be somewhat difficult to form such as would afford to the parties a more satisfactory security than that which arises from the law of nations—a neutral ship is entitled to freight for enemy goods captured on board her; but this right, if so admitted, may be forfeited by the irregular conduct of the neutral, by the possession of false or double papers, by the destruction of papers, or by

those fraudulent concealments and evasions, which are inconsistent with fair and impartial neutrality. A ship taken and detained without just cause, is, together with her cargo, at the risk of the captors from the moment of capture; and in cases of partial or total loss, or of damages by detention, the owner is entitled to full and complete indemnification. But in case the neutral ship is under such equivocal and doubtful circumstances as afford probable cause to believe that either the ship, or cargo, is enemy property, a situation not to be reconciled with an open and fair neutrality, *in such case*, though on trial both ship and cargo should turn out to have been *bona-fide* neutral property, yet the captors may avail themselves of her equivocal situation and character, in mitigation, if not, under very peculiar circumstances, in total discharge, of damages. No stipulation, therefore, without these exceptions, would have afforded to the parties adequate security against such irregularities; and with them, its want of precision would have left the subject as it now stands, to be regulated by the known and approved provisions of the law of nations.

These provisions being well understood, the article concludes with a stipulation against delays in the admiralty, and in the payment and recovery of the damages it shall decree.

This examination, I flatter myself, has fulfilled its object, which was to prove, that the article relinquishes no right that we possessed as a nation; that it is agreeable to, and supported by, the law of nations. A law in relation to this subject, coeval with the origin of maritime commerce, and the prin-

ciples whereof have immemorially operated among nations.

It was desirable that a stipulation, similar to that contained in our other treaties, should have been obtained. But the time was unfavorable to the attainment of this object; and, as with great propriety has been observed by Mr. Jefferson, in behalf of our Government, "since it depends on the will of other nations as well as our own, we can only obtain it when they shall be ready to consent." By the 12th article, the parties agree to renew the negotiation on this point, within the compass of two years after the conclusion of the present war; when perhaps the restoration of peace, and other circumstances, may prove more propitious to our views.

CAMILLUS.

NO. XXXI.

1795.

I resume the subjects of the two last papers for the sake of a few supplementary observations.

The objections to the treaty, for not containing the principle, "that free ships make free goods," as being the relinquishment of an advantage which the modern law of nations gives to neutrals, have been fully examined, and, I flatter myself, completely refuted.

I shall, however, add one or two reflections by way of further illustration. A pre-established rule of the law of nations can only be changed by their *common consent.* This consent may either be express, by treaties, declarations, etc., adopting and promising

the observance of a different rule, or it may be implied by a course of practice or usage. The consent, in either case, must embrace the great community of civilized nations. If to be inferred from treaties, it must be shown that they are uniform and universal. It can, at least, never be inferred, while the treaties of different nations follow different rules, or the treaties between the same nation and others vary from each other. So also as to usage. It must be uniform and universal, and, let it be added, it must be continued. A usage adopted by some nations, and resisted by others, or adopted by all temporarily and then discontinued, is insufficient to abolish an old, or substitute a new rule of the law of nations. It has been demonstrated that no consent of either description has been given to the rule, which is contended for in opposition to the treaty.

The armed neutrality, so much quoted, is entirely deficient in the requisite characters. Its name imports that it was an armed combination of particular powers. It grew up in the midst of a war, and is understood to have been particularly levelled against one of the belligerent parties. It was resisted by that power. There were other powers which did not accede to it. It is a recent transaction, and has never acquired the confirmation of continued usage. What is more, it has been virtually abandoned by some of the parties to it—and among these, by the principal promoter of it, the politic and enterprising Catharine. It is, therefore, a perversion of all just ideas to ascribe to such a combination the effect of altering a rule of the law of nations.

In most important questions, it is remarkable that the opposers of the truth are as much at variance with each other as they are with the truth they oppose. This was strikingly exemplified when the present Constitution of the United States was under deliberation. The opposition to it was composed of the most incongruous materials—the same thing is observable in relation to the treaty. And one instance of the contrariety applies to the rule cited above.

While some of the adversaries of the treaty complain of the admission of a contrary principle by that instrument, as the abandonment of a rule of the present law of nations; others, conceding that there is no such rule yet established, censure that admission as a *check* to its *complete* and *formal establishment*, and as a retrograde step from this desirable point.

The objection in this form is more plausible than in the other, but it is not less destitute of substance. If there has been any retrograde step, it was taken by the Government prior to the treaty. Authentic documents, which have been communicated by the Executive to Congress, contain the evidence of this fact.

Early in the year 1793, some British cruisers having stopped vessels of the United States, and taken out of them articles which were the property of French citizens, Mr. Genet, the then minister of France, in a letter of the 9th of July of that year, made a lively representation upon the subject to our Government, insisting, in a subsequent letter of the 25th of that month, in which he recurs to the same

point, that the principles of neutrality established, that friendly vessels make friendly goods; and in effect, that the violation of this rule by Great Britain was a violation of our neutral rights, which we were bound to resent.

The reply of our Government is seen in a letter from our Secretary of State to that minister, of the 24th of July. It is in these terms: "I believe," says Mr. Jefferson, "it cannot be doubted, but that by the general law of nations the goods of a friend, found in the vessel of an enemy, are free, and the goods of an enemy, found in the vessel of a friend, are lawful prize. Upon this principle, I presume, the British armed vessels have taken the property of French citizens found in our vessels in the cases above mentioned; and, I confess, I should be at a loss on what principle to reclaim them. It is true that sundry nations, desirous of avoiding the inconveniences of having their vessels stopped at sea, ransacked, carried into port, and detained under pretence of having enemy goods on board, have, in many instances, introduced, by their special treaties, another principle between them, that enemy bottoms shall make enemy goods, and friendly bottoms friendly goods; a principle much less embarrassing to commerce, and equal to all parties in point of gain and loss; but this is altogether the effect of particular treaty, controlling, in special cases, the general principles of the law of nations, and, therefore, taking effect between such nations only as have so agreed to control it."

Nothing can be a more explicit or unequivocal abandonment of the rule, that free ships make free

goods, and *vice versa*, than is contained in this communication. But this is not all. In the letter from Mr. Jefferson to our minister in France, of the 26th of August, 1793, instructing him to urge the recall of Mr. Genet, the subject is resumed; the position asserted in answer to Mr. Genet insisted upon anew, and enforced by additional considerations. Among other suggestions, we find these: "We suppose it to have been long an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, and an enemy's goods lawful prize in the vessel of a friend. The inconvenience of this principle has induced several nations latterly to stipulate against it by treaty, and to substitute another in its stead, that free bottoms shall make free goods, and enemy bottoms enemy goods. We have introduced it into our treaties with France, Holland, and Russia; and French goods, found by the two last nations in American bottoms, are not made prize of. It is our wish to establish it with other nations; but this requires their consent also, is a work of time, and in the meanwhile they have a right to act on the general principle, without giving to us or to France, cause of complaint. Nor do I see that France can lose by it on the whole. For though she loses her goods when found in our vessels, by the nations with whom we have no treaties, yet she gains our goods when found in the vessels of the same and all other nations; and we believe the latter mass to be greater than the former."

Thus, then, stood the business antecedent to the treaty. Great Britain, adhering to the principle of

the general and long established law of nations, captures French property in our vessels, and leaves free our property in French vessels. We acquiesce in this practice, without even a remonstrance or murmur. The French minister complains of it, as contrary to the principles of neutrality. We reply that, in our opinion, it is not contrary to those principles—that it is fully warranted by the general law of nations; that treaties, which establish a different rule, are merely exceptions to that law, binding only on the contracting parties; that having no treaty of the sort with Great Britain, we should be at a loss on what ground to dispute the legitimacy of her practice. We do not simply forbear to oppose; we do not offer to France as an excuse for our forbearance, that it is inconvenient to us, at the moment, to assert a questionable right at the hazard of war, but we tell her peremptorily that, in our opinion, no such right exists, and that the conduct of Great Britain, in the particular case is justified by the law of nations; neither do we wrap the motive of our forbearance in silence, nor content ourselves with revealing it confidentially to France alone, but we publish it without reserve to the world, and thus, in the presence of Great Britain, and every other nation, make a formal renunciation of the pretension, that "free ships shall make free goods, and enemy ships enemy goods"; no counter declaration is heard from either house of Congress.

It was impossible to give a more full sanction to the opposite principle than was given by this conduct, and these public and positive declarations of our

Government. It was impossible more completely to abandon the favorite ground. It is puerile to attempt to discriminate between the force of this species of renunciation and that of an admission of its propriety by treaty. The conduct of a government avowed and explained, as to motives, by authentic public declarations, may assert or renounce a pretension as effectually as its compacts. Every nation, with whom we had no contrary stipulation, could say to us as well before as since the treaty with Great Britain: "Your Government has explicity admitted that free ships do not make free goods, and you have no right to complain of our not observing that rule towards you." Candor, therefore, would oblige us to say that the treaty has left this point where it found it—that it has only not obtained from Great Britain a concession in favor of an innovation upon the law of nations, which it is desirable to establish, but which cannot be claimed as matter of right. Though, therefore, it may not have the merit of strengthening, it has not the demerit of weakening, the ground.

The difference in our position, in this respect, before and since the treaty, amounts to this, that before the treaty the Government had abandoned the ground through one organ, Mr. Jefferson; by the treaty, it continued the abandonment through another organ, Mr. Jay. If we consider the organ as the voluntary cause in each case (the presumption of which is equally fair in both cases), and if there be any blame, it falls more heavily on Mr. Jefferson than on Mr. Jay; for the former founded and made the retreat, and the latter only did not advance from

the disadvantageous post to which he had retreated. In other words, Mr. Jay did only not recover the ground which Mr. Jefferson had lost. And we know that, in general, it is a far more difficult task to regain than to keep an advantageous position.

But, in truth, no blame can justly be imputed in either case. The law of nations was against the rule which it is desired to introduce. The United States could not have insisted upon it as matter of right; and in point of policy it would have been madness in them to go to war, to support an innovation upon the pre-established law. It was not honorable to claim a right, and suffer it to be infracted without resistance. It is not for young and weak nations to attempt to enforce novelties or pretensions of equivocal validity. It is still less proper for them to contend, at the hazard of their peace, against the clear right of others. The object was truly not of moment enough to risk much upon it. To use the French proverb, "*The game was not worth the candle.*" In every view, therefore, it was wise to desert the pretension.

So, also, in the midst of a war, like that in which Great Britain was engaged, it were preposterous to have expected that she would have acceded to a new rule, which, under the circumstances of her great maritime superiority, would have operated so much more conveniently to her enemy than to herself. And it would have been no less absurd to have made her accession to that rule the *sine qua non* of an arrangement otherwise expedient. Here again *the game would not have been worth the candle.*

The importance of the rule has artfully been very much magnified, to depreciate proportionably the treaty, for not establishing it. It is to be remembered, that if something is gained by it, something is also given up. It depends on incalculable circumstances, whether, in a particular war, most will be lost or gained. Yet the rule is, upon the whole, a convenient one to neutral powers. But it cannot be pretended that it is of so great a value, as that the United States ought to adopt it as a maxim, never to make a treaty of commerce, in which it was not recognized. They might by this maxim forego the advantages of regulating their commercial intercourse in time of peace with several foreign powers, with whom they have extensive relations of trade, by fixed and useful conventional rules, and still remain subject in time of war to the inconveniences of not having established, with those powers, the principle to which they make that sacrifice.

Though, therefore, it be a merit to a certain extent in a treaty to contain this principle, it is not a positive fault or blemish that it does not contain it. The want of it is not a good cause of objection to a treaty otherwise eligible.

Let me add, too, in the spirit of Mr. Jefferson's letter, that however it may be our wish to establish the rule with other nations besides those with whom we have already done it, this requires their consent also, of course their conviction, that it is their interest to consent; and that, considering the obstacles which lie in the way, the attainment of the object must be "*a work of time.*" It presupposes, in some of the principal maritime powers, a great change of ideas,

which is not to be looked for very suddenly. It was not, therefore, to have been expected of our envoy, that he was to have accomplished the point at so premature and so unfavorable a juncture.

The assertion, that he has abandoned it, is made in too unqualified a manner. For while he admits the operation for the present, of the general rule of the law of nations, he has, by the 12th article, engaged Great Britain in a stipulation, that the parties will, at the expiration of two years after the existing war, *renew* their *discussion*, and *endeavor to agree* whether in any and what cases neutral vessels shall protect enemy's property. It is true, it will be in the option of Great Britain then to agree or not; but it is not less true that the principle is retained with consent of Great Britain in a *negotiable* state. So far perhaps some ground has been retrieved.

I confess, however, that I entertain much doubt as to the probability of a speedy general establishment of the rule, that friendly ships shall make friendly goods, and enemy ships enemy goods. It is a rule against which, it is to be feared, the preponderant maritime power, to whatever nation this character may belong, will be apt to struggle with perseverance and effect, since it would tend to contract materially the means of that power to annoy and distress her enemies, whose inferiority on the sea would naturally cause their commerce, during war, to be carried on in neutral bottoms. This consideration will account for the resistance of Great Britain to the principle, and for the endeavors of some other powers to promote it; and it deserves notice, that her last treaty with France was severely

assailed by some of the chiefs of opposition, for containing a stipulation in favor of that principle. The motive for consenting to it, in this instance, probably was, that the stipulation was likely to be rendered, in a great degree, nugatory by the relative situation of the two nations, which, in almost any war in which one of the two was engaged on one side, would probably render the other a party on the opposite side.

If these conjectures be right, there is a reflection which lessens much the value of stipulations in favor of the rule; that so long as one or more of the maritime powers disavow it, there will be a strong temptation to depart from a scrupulous observance of such stipulations as we, in relation to France, have experienced in the present war.

In the course of the arguments against the 17th article, for virtually admitting the right of search in time of war, the objectors have had the temerity to cite the opinion of Vatel, as being opposed to that right; and a mutilated quotation has given an appearance of truth to the assertion. It has been heretofore shown, by passages extracted from his work, that his opinion, so far from denying explicitly, supports the right to search. But it may be useful to examine the part of it which has been tortured into a contrary inference.

After affirming the right of search (B. 3, chap. 7, 8, 14) he proceeds thus: "but to avoid inconveniences, violence, and every other irregularity, the manner of the search is settled in the treaties of navigation and commerce. According to the present *custom*, credit is to be given to certificates and bills of lading produced

by the master of the ship." Hence it is alleged the right to search is turned into the right of inspecting the ship's papers, which, being entitled to credit, are to preclude further scrutiny.

But what immediately follows destroys this conclusion; the words "unless any ground appear in them, or there be very good reasons for suspecting their validity," are subjoined to the clause just quoted. This admits clearly, that the ship's papers are not to be conclusive, but that, upon just cause of suspicion, the papers may be disregarded, and the right of search may be exercised.

Who is to be the judge of the credit due to the papers and of the just cause of suspicion? Manifestly the officer of the belligerent party who visits the neutral vessel. Then what does the whole amount to? Merely this—that ship's papers are entitled to a certain degree of respect and credit; how much, is left to the discretion of the officer of the belligerent party! who, if he be not satisfied of the fairness and validity of the papers, may proceed to their verification, by a more strict and particular search, and then if he still sees, or supposes he sees, just cause of suspicion, he may carry the vessel into a port of his own country, for judicial investigation. In doing this he acts at his peril, and for an abuse of his discretion, exposes himself to damages and other punishment.

This is the true and evident sense of Vatel, and it agrees with the doctrine advocated in these papers, and, I will add, with the treaty under examination.

The 17th article admits, that the vessels of each party, for *just cause* of suspicion of having on board

enemy's property, or of carrying to the enemy contraband articles, may be captured or detained, and carried to the nearest and most convenient port of the belligerent party, to the end that enemy's property and contraband articles aboard may become lawful prize. But so far from countenancing any proceeding without *just cause* of suspicion, or from exonerating the officer of the belligerent party from a responsibility for such proceeding, it leaves the law of nations, in this particular, in full force; and contemplating that such officer shall be liable for damages, when he proceeds without *just cause* of suspicion, provides that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes brought in for adjudication, or in the *payment or recovery of any indemnification adjudged or agreed to be paid to the masters or owners of such ships.* Besides which, the 19th article stipulates, in order that more abundant care may be taken for the security of the respective subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men-of-war and privateers of either party, that the commanders of ships of war and privateers shall forbear doing any damage to those of the other party, committing any outrage against them; and that if they act to the contrary, *they shall be punished,* and shall also be bound in their persons and estates *to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be.* And further, after establishing that the commanders of privateers shall, before they are commissioned, give security to satisfy all damages and injuries, it adds, that in all cases of aggressions their commissions shall be revoked and annulled.

These provisions not only conform to, and corroborate the injunctions of the laws of nations, but they refute the assertion, that the treaty is altogether deficient in precautions for guarding neutral rights; since those above-mentioned are among the most efficacious. It is not presumable that any stipulations have been or can be made which will take away all discretion from the marine officers of the belligerent parties; for this would be a total surrender of the rights of belligerent to neutral nations, and so long as any discretion is left, its right or wrong exercise will depend on the personal character of each officer; and abuses can only be restrained by the penalties that await them. Those stipulations of treaties, then, which reinforce the laws of nations as to the infliction of penalties, are the most effectual of the precautions which treaties can adopt for the security of neutral rights; and in this particular the treaty with Great Britain is to the full as provident as our other treaties. In one point I believe it is more so; for it expressly stipulates a revocation of the commissions of the commanders of privateers for the aggressions they may commit.

Is not the passage last cited from Vatel a true commentary on those stipulations, for regulating and mitigating the right of search, which are found in our own and other treaties? Do they not all intend to reserve to the belligerent party a right of judging of the validity and fidelity of the papers to be exhibited, and of extending the search or not, according to the circumstances of just suspicion which do or do not appear? and if this be their true construction, as it certainly is their construction in practice, which our

own experience testifies, to what, after all, do they amount, more than without them the laws of nations, as universally recognized, of themselves pronounce? What real security do they afford more than the treaty with Great Britain affords?

It is much to be suspected, that there will always be found advantages essentially nominal, operating or not according to the strength or weakness of the neutral party; which, if strong, will find abundant foundation in the acknowledged laws of nations on which to rest the protection of its rights.

It has been said to be just matter of surprise, that these precautions should have no place in a treaty with Great Britain, whose conduct on the seas so particularly suggested and enforced every guard to our rights that could be reasonably insisted on. Observations of this kind assume constantly the supposition that we had it in our power to fashion every provision of the treaty exactly to our own taste, and that the ideas of the other contracting party were to have no influence even upon the minor features of the contract. But this supposition is absurd; and a treaty may still be entitled to our approbation, which adjusts acceptably the great points of interest, though in some of its details it falls short of our desires. Nor can any well-informed man sincerely deny that it was to have been expected, that an adjustment of the particulars in question would fall short of our ideas. It may be answered, that we were then at liberty not to make the treaty; so we were, but does it follow that it would have been wise to split on such points?—upon a just estimate, their intrinsic value is very moderate.

CAMILLUS.

NO. XXXII.

1795.

The eighteenth article of the treaty, which regulates the subject of contraband, has been grievously misrepresented; the objections used against it with most acrimony, are disingenuous and unfounded! Yet while I make this assertion, which, I flatter myself, I shall be able to prove, I shall not pretend to maintain that it is an article completely satisfactory. I even admit that it has one unpleasant ingredient in it, and I am convinced that our envoy must have consented to it with reluctance.

But while candor demands this concession, it equally admonishes us, that, under the circumstances of the moment, the points in this respect to be adjusted were peculiarly unmanageable; that the position of the other party rendered an arrangement entirely agreeable to us, impracticable; that without compromise nothing could have been regulated; that the article made no change for the worse in our prior situation, but in some particulars made our ground better; and that estimating truly the relative circumstances of the parties, there is no probability that any thing more acceptable could have been established.

I will add, that a degree of imperfection, which may fairly be attributed to this article, is far from being of such importance as, on solid calculations, ought to defeat the treaty. No clear right is abandoned, no material interest of the nation injured.

It is one thing, whether every part of the treaty be satisfactory; another, and a very different thing, whether in the aggregate it be eligible or not, and

ought to be accepted or rejected. Nations could never make contracts with one another if each were to require that every part of it should be adjusted by its own standard of right and expediency. The true question always is upon the collective merits of the instrument; whether, upon the whole, it reasonably accommodates the opinions and interests of the parties. Tried by this test, the treaty negotiated with Great Britain fully justifies the acceptance of it by the constituted authorities of our country, and claims the acquiescence of every good citizen.

The most labored, and, at the same time, the most false of the charges against the eighteenth article is, that it allows provisions to be contraband in cases not heretofore warranted by the laws of nations, and refers to the belligerent party the decision of what those cases are. This is the general form of the charge. The draft of a petition to the Legislature of Virginia, reduces it to this shape. The treaty "*expressly* admits that provisions are to be held contraband in cases other than when bound to an invested place, and *impliedly* admits that such cases exist at present."

The first is a palpable untruth, which may be detected by a bare perusal of the article. The last is an untrue inference, impregnated with the malignant insinuation that there was a design to sanction the unwarrantable pretension of a right to inflict famine on a whole nation.

Before we proceed to an analysis of the article, let us review the prior situation of the parties. Great Britain, it is known, had taken and acted upon the ground that she had a right to stop and detain, on pay-

ment for them, provisions belonging to neutrals, going to the dominions of France. For this violent and impolitic measure, which the final opinion of mankind will certainly condemn, she found color in the sayings of some writers of reputation on public laws.

A passage of this kind, from Vatel, has been more than once quoted, in these terms: "Commodities, particularly used in war, and the importation of which, to an enemy, is prohibited, are called *contraband* goods. Such are military and naval stores, timber, horses, and *even provisions in certain junctures, when there are hopes of reducing the enemy by famine.*" Heinecius * countenances the same opinion, and even Grotius seems to lean towards it.†

The United States, with reason, disputed this construction of the law of nations; restraining the general propositions which appear to favor it, to those cases in which the chance of reducing by famine was *manifest* and *palpable*, such as the cases of particular places, *bona fide* besieged, blockaded, or invested. The Government accordingly remonstrated against the proceeding of Great Britain, and made every effort against it which prudence, in the then posture of affairs would permit. The order for seizing provisions was, after a time, revoked.

In this state our envoy found the business. Pending the very war in which Great Britain had exercised the pretension, with the same administration which had done it, was it to have been expected that she would, in a treaty with us, even virtually or impliedly have acknowledged the injustice or impropriety of the con-

* Law of Nature and Nations, Book 2, Chap. 9, Sec. 201. Navibus ob vect.

† Book III., Chaps. I. and V., 3; Chaps. I. and X.

duct? Here was no escape, as in the instance of the order of the 6th of November, 1793, in the misconceptions of her officers. The question was to condemn a deliberate and unambiguous act of the Administration itself. The pride, the reputation, and the interest of that Administration forbade it.

On our side, to admit the pretensions of Great Britain was still more impossible. We had every inducement of character, right, and interest against it. What was the natural and only issue out of this embarrassment? Plainly, to leave the point unsettled; to get rid of it; to let it remain substantially where it was before the treaty. This, I have good ground to believe, was the real understanding of the two negotiators; and the article has fulfilled that view.

After enumerating specifically what articles shall be deemed contraband, it proceeds thus, "And whereas the difficulty of *agreeing* on the *precise cases*, in which alone *provisions* and *other articles*, not generally contraband, may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed, that whenever any such articles, so becoming contraband *according to the laws of nations*, shall, for that reason, be seized, the same shall *not be confiscated*, but the owners thereof shall be *speedily* and *completely indemnified;* and the captors, or, in their default, the government under whose authority they act, shall pay to the masters or owners of such vessels, the full value of all articles with a reasonable mercantile profit thereon, together with the freight and also the demurrage, incident to such detention."

The difficulty of agreeing on the precise cases in which articles, not generally contraband, become so, from particular circumstances, is expressly assigned as the motive to the stipulation which follows. This excludes the supposition that any cases whatever were intended to be admitted or agreed. But this difficulty rendered it expedient to provide against the inconveniences and misunderstandings which might thence arise; a provision, with this view is, therefore, made, which is that of liberal compensation for the articles taken. The evident intent of this provision is, that in *doubtful* cases, the inconveniences to the neutral party being obviated or lessened by compensation, there may be the less cause or temptation to controversy and rupture, the affair may be more susceptible of negotiation and accommodation. More than this cannot be pretended; because it is further agreed, "that whenever any such articles so become contraband, *according to the existing laws of nations*, shall, for that reason, be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified," etc., etc.

Thus the *criterion* of the cases, in which articles, not generally contraband, may, from particular circumstances, become so, is expressly the *existing law of nations;* in other words, the law of nations at the time the transaction happens. When these laws pronounce them contraband, they may, for that reason, be seized; when otherwise, they may not be seized. Each party is as free as the other to decide whether the laws of nations do, in the given case, pronounce them contraband or not, and neither is obliged to be

governed by the opinion of the other. If one party, on a false pretext of being authorized by the laws of nations, makes a seizure, the other is at full liberty to contest it, to appeal to those laws, and, if it thinks fit, to oppose, even to reprisals and war. This is the express tenor of the provision—there is nothing to the contrary; nothing that narrows the ground; nothing that warrants either party in making a seizure, which the law of nations, independent of the treaty, permits; nothing which obliges either party to submit to one, when it is of opinion the law of nations has been violated by it.

But as liberal compensation is to be made in every case of seizure, whereof difference of opinion happens, it will become a question of prudence and expediency, whether to be satisfied with the compensation, or to seek further redress. The provision will, in doubtful cases, render an accommodation of opinion the more easy, and, as a circumstance conducing to the preservation of peace, is a valuable ingredient in the treaty. A very different phraseology was to have been expected, if the intention had been, to leave each party at liberty to seize, agreeably to its own opinion of the law of nations, upon the condition of making compensation. The stipulation would thus have been: "It is agreed, that whenever either of the contracting parties shall seize any such articles so *becoming* contraband, and which shall, for that reason, be seized"; this makes, not the opinion of either party, but the fact of the articles having *become* contraband by the laws of nations, the condition of the seizure.

A cavil has arisen on the term "*existing*," as if it

had the effect of enabling one of the parties to make a law of nations for the occasion. But this is a mere cavil.

No one nation can make a law of nations; no positive regulation of one state, or of a partial nomination of states, can pretend to this character. A law of nations is a law which nature, agreement, or usage, has established between nations; as this may vary from one period to another by agreement or usage, the article very properly uses the term "existing," to denote that law which, at the time the transaction may happen, shall be then the law of nations. This is a plain and obvious use of the term, which nothing but a spirit of misrepresentation could have perverted to a different meaning.

The argument against the foregoing construction is in substance this (viz.): it is now a settled doctrine of the law of nations that provisions and other articles, not generally contraband, can only become so when going to a place besieged, blockaded, or invested; cases of this kind are fully provided for in a subsequent part of the article; the implication, therefore, is that something more was intended to be embraced in the antecedent part.

Let us first examine the fact, whether all the cases of that kind are comprehended in the subsequent part of the article. I say they are not. The remaining clause of the article divides itself into two parts. The first describes the case of a vessel sailing for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded, or invested; and provides that, in such case, the vessel may be

turned away, but not detained, nor her cargo, if not contraband, confiscated, unless after notice she shall again attempt to enter. The second describes the case of a vessel, or goods, which had entered into such port or place before it was besieged, blockaded, or invested, and declares that the one or the other shall not be liable to confiscation, but shall be restored to the owners thereof. These are the only cases described or provided for. A third, which occurs on the slightest reflection, is not mentioned: the case of a vessel going to a port or place which is besieged, blockaded, or invested, with notice of its being in that state when she commences her voyage, or previous to her receiving notice from the besieging, blockading, or investing party. This is left to the operation of the general law of nations, except so far as it may be affected in respect to compensation by the antecedent clause. Thus the fact, which is the foundation of the argument, fails, and with it, of course, the argument itself.

But had this been otherwise, the conclusion would still have been erroneous; the two clauses are entirely independent of each other, and though they might both contemplate the same cases in whole, or in part, they do it with an eye to very different purposes.

The object of the first is to lessen the danger of misunderstanding, by establishing this general rule, that whenever articles, not commonly contraband, become so from particular circumstances, according to the law of nations, they shall still not be confiscated, but, when seized, the owners of them shall be indemnified.

The object of the last is to regulate some special

consequences with regard to vessels and goods going to, or which had previously gone to places besieged, blockaded, or invested; and in respect to which the dispositions of the laws of nations may have been deemed doubtful or too rigorous. Thus it is held that the laws of nations permit the confiscation of ships and goods going to places besieged, blockaded, or invested; but this clause decides that if going without notice, so far from being confiscated, they shall not even be detained, but shall be permitted to go whithersoever they please. If they persist after notice, then the contumacy shall be punished with confiscation. In both instances the consequence is entirely different from every thing in the antecedent clause.

There, there is seizure, with compensation. Here, in one instance, seizure is forbidden, and permission to go elsewhere is enjoined. In the other instances, the offending things are confiscated, which excludes the idea of compensation. Again, the last part of the last clause stipulates, in the case which it supposes, the restoration of the property to its owners, and so excludes both seizure and compensation. Hence it is apparent the objects of the two clauses are entirely foreign to each other, and that no argument nor inference whatever can be drawn from the one to the other.

If it be asked, what other cases there can be, except those of places besieged, blockaded, or invested? and if none other, what difficulty in defining them? why leave the point so vague and indeterminate? One answer, which indeed has already been given in substance, is, that the situation of one of the parties prevented an agreement at the time; that not being able

to agree, they could not define; and the alternative was to avoid definition. The want of definition only argues want of agreement. It is strange logic to assert, that this or that is admitted, because nothing is defined.

Another answer is, that even if the parties had been agreed that there were no other cases than those of besieged, blockaded, or invested places, still there would have remained much room for dispute about the precise cases, owing to the impracticability of defining what is a besieged, blockaded, or invested place. About this there has been frequent controversy; and the fact is so complicated, puts on such a variety of shapes, that no definition can well be devised, which will suit all. Thence nations, in their compacts with each other, frequently do not attempt one; and where the attempt has been made, it has left almost as much room for dispute about the definition as there was about the thing.

Moreover, is it impossible to conceive other cases than those mentioned above, in which provisions and other articles not generally contraband might, on rational grounds, be deemed so? What if they were going expressly, and with notice, to a besieging army, whereby it might obtain a supply essential to the success of its operations? Is there no doubt that it would be justifiable in such case to seize them? Can the liberty of trade be said to apply to any instance of direct and immediate aid to a military expedition? It would be at least a singular effect of the rule, if provisions could be carried without interruption for the supply of a Spanish army besieging Gibraltar, when, if

destined for the supply of the garrison in that place, they might, of right, be seized by a Spanish fleet.

The calumniators of the article have not had the candor to notice that it is not confined to provisions, but speaks of provisions and other articles. Even this is an ingredient which combats the supposition that countenance was intended to be given to the pretension of Great Britain with regard to provisions which, depending on a reason peculiar to itself, cannot be deemed to be supported by a clause including other articles, to which that reason is entirely inapplicable.

There is one more observation which has been made against this part of the article which may deserve a moment's attention. It is this, that though the true meaning of the clause be such as I contend for, still the existence of it affords to Great Britain a pretext for abuse which she may improve to our disadvantage. I answer, it is difficult to guard against all the perversions of a contract which ill faith may suggest. But we have the same security against abuses of this sort, which we have against those of other kinds, namely, the right of judging for ourselves, and the power of causing our rights to be respected. We have this plain and decisive reply to make, to any uncandid construction which Great Britain may, at any time, endeavor to raise: "The article pointedly and explicitly makes the existing law of nations the standard of the cases in which you may rightfully seize provisions and other articles not generally contraband. This law does not authorize the seizure in the instance in question; you have consequently no warrant under the treaty for what you do."

The same disingenuous spirit which tinctures all the conduct of the adversaries of the treaty, has been hardy enough to impute to it the last order of Great Britain, to seize provisions going to the dominions of France.

Strange, that an order issued before the treaty had ever been considered in this country, and embracing the other neutral powers besides the United States, should be represented as the fruit of that instrument!* The appearances are, that a motive no less imperious than that of impending scarcity has great share in dictating the measure, and time, I am persuaded, will prove that it will not ever be pretended to justify it by any thing in the treaty.

CAMILLUS.

NO. XXXIII.

1796.

The course thus far pursued in the discussion of the 18th article has inverted the order of it, as it stands in the treaty. It is composed of three clauses, the two last of which have been first examined; I thought it advisable, in the outset, to dispose of an objection which has been the principal source of clamor.

The first clause of that which remains to be examined enumerates the articles which, it is agreed, shall be deemed contraband of war. These are, "all arms, and implements serving for the purpose of war, such as cannon, muskets, mortars, petards, bombs, grenadoes, carcases, saucisses, carriages for cannon, musket-rests, bandoliers, gunpowder, match, saltpetre, balls, pikes, swords, head-pieces, cuirasses, halberts,

* As reasonable would it be to place to its account the similar order which was issued before the mission of an envoy was thought of.

lances, javelins, horse-furniture, holsters, belts, and generally all other implements of war; as also timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted."

All which articles are declared to be just objects of confiscation, when attempted to be carried to any enemy of either party.

It is well understood, that war abridges the liberty of trade of neutral nations; and that it is not lawful for them to supply either of two belligerent parties with any article deemed contraband of war; nor may they supply any article whatever to a place besieged, blockaded, or invested. The former case includes a special catalogue of articles which have an immediate reference to war; the latter extends to all kinds of goods and merchandise. The penalty in both cases is confiscation.

These positions have not been disputed. The only question which has been or can be raised, must respect the enumeration of the articles which are to be considered as contraband.

In comparing the enumeration in the present treaty, with that of our former treaties, we find the differences to be these. Our former treaties include "*horses*," and one of them "soldiers," which our present does not; but our present includes "timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted," which are not to be found in our former treaties.

It is alleged that the including of these articles is an extension of the list of contraband beyond the limit of the *modern* law of nations; in support of which allegation, it is affirmed, that they have been excluded by the uniform tenor of the treaties which have been formed for more than a century past.

Though this position will not, upon careful examination, appear correct; yet it is so far founded, as to claim an acknowledgment, that the article under consideration has, in this instance, pursued the *rigor* of the law of nations. It was to this I alluded, when I observed that it contained one unpleasant ingredient.

It is a fact, that far the greater proportion of modern treaties exclude naval stores or articles for ship-building; yet this is not universally the case.

By the third article of the treaty of alliance and commerce between Great Britain and Denmark, in 1670, the parties agree, "not to furnish the enemies of each other with any provisions of war, as soldiers, arms, engines, guns, ships, or other necessaries for the use of war, nor to suffer the same to be furnished by their subjects." An explanation of this article was made by a convention, dated the 4th of July, 1780, which after enumerating as contraband the usual catalogue of military implements, adds, in the precise terms of our article, "as also timber for ship-building, tar, rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted."

In a series of treaties between Great Britain and Portugal, down to the year 1703, I do not discover

that there has ever been a regulation of the articles which are to be treated as contraband, between these powers.

And between Sweden and Great Britain, the 11th article of a treaty, entered into in 1661 (and still in force unaltered, though a subsequent commercial treaty was made between those powers as late as 1776), subjects to confiscation equally all articles called *contraband*, and *especially money*, *provisions*, etc. This specification not being complete, naval stores are left upon the open ground of the law of nations; but money and provisions are superadded. This latitude would bear little doubt as to the intention to include naval stores.*

* An opinion has been propagated that Sweden armed in concert with Denmark, in order to maintain the neutral right of carrying corn and flour to France, in opposition to the convention of March, 1793, between Great Britain and Russia; and that in consequence of this proceeding, the remonstrances of these powers have proved more successful than we have been in obtaining satisfaction from Great Britain.

This opinion is, throughout, an error, made use of by those whose persevering aim has been, by silencing truth, reason, and moderation, and inflaming the angry passions of the community, to *involve* the country in anarchy and war. The authors of this imposture, as well as the exalted patriots who have seen in the memorial of our envoy the humiliation of our country, are referred to a "collection of state papers relative to the war against France," published by Debret, in 1794. The perusal of the Swedish state papers, as well as the memorials of the able and prudent Bernstorff, may teach these gentlemen a little of what is deemed good manners on these occasions.

So far from even remonstrating, much less arming on account of the British instruction of June, 1793, when that order was notified at Stockholm, by the British Resident there, the Government of Sweden, by their Resident at London, acknowledged, in terms too respectful to be repeated in the hearing of our exclusive patriots, that Sweden was perfectly satisfied with the instruction; since, instead of payment, which the order insured, all provisions, in virtue of an existing treaty between the two nations, were liable to confiscation when seized, on their way to an enemy.

This note is added for the purpose of refuting a popular error, and not to vindicate the instruction alluded to, which I consider as an injury to the rights of neutral nations, that has not been justified by the answers that have been given by Great Britain to the American and Danish memorials.

It appears from these specimens, that there is not a perfect uniformity in the conventions between nations; and that no purely positive law of nations can be deduced from that source.

If we call to our aid the principles of reason and natural justice, which are the great foundations of the law of nations, we shall not discover, in this instance, *data* as certain as could be wished, for a satisfactory conclusion; and the soundest determination which we can adopt will be, that beyond a certain point, the question is in a great degree arbitrary, and must depend materially upon conventional regulation between nation and nation. Hence it is there is so great a diversity in the stipulations of different parties on this point, indicating that there is no absolute rule. Hence also it is, that several nations at different times, being at war, have thought themselves authorized to regulate and announce, by public declarations, the articles which they would consider and treat as contraband.

The opinion of writers will be found to support the article as it stands, in the particular, which is now the subject of discussion.

Vatel, we have before seen (B. B. C. 3, 6, 7, S. 112), expressly ranks *naval stores* and *timber* under the denomination of contraband goods.

Heinecius (*De Navibus*, etc., chap. I., S. 10, 11, and 14) accords in the same position to the extent of whatsoever appertains to the equipment af vessels.*

Bynkershoek is less explicit. After laying it down as the general rule that naval stores, or the materials of ships, are not contraband, he proceeds thus: "Yet

* Vela, Restes et si quæ alia ad apparatum nauticum pertinent.

it sometimes happens that the materials of ships may be prohibited, *if an enemy is in great want of them, and without them cannot conveniently carry on the war*"*; and he afterwards cites, with approbation, several edicts or proclamations which the states-general, in different wars with different nations, have published, declaring those articles contraband—thus referring it to the belligerent party to judge of and pronounce the cases when they may rightfully be deemed so. And the same idea seems to have been adopted by *Grotius*† and some other writers on public law. I have not met with one whose opinion excludes naval stores from the list of contraband.

Grotius, in discussing this question, divides goods into three classes: 1. Those which are of use only in war, as arms, etc. 2. Those which serve only for pleasure. 3. Those useful for peaceable as well as for warlike purposes, "as money, *provisions*, ships, and *naval stores*." Concerning which he argues in substance, that the first class are clearly contraband, that the second class are clearly not contraband, and that the third class may or may not be so, according to the state and circumstances of the war; alleging that, *if necessary to our defence, they may be intercepted*, but upon condition of restitution, unless there be just cause to the contrary; which just cause is explained by the examples of sending them to a besieged or blockaded place.

The reasoning about the third class has a very inconvenient latitude. It subjects the trade of neutral

* Quandoque tamen accidit ut et navium materia prohibeatur, si hostis ea quam maxime indigeat at absque ea commode bellum gerere haud possit. Quæstionum Juris Publici L., i. chap. x., page 80.

† Book III., Chaps. i., v.

nations too extensively to the discretion of belligerent powers; and yet there is a serious embarrassment about drawing the true line, one which will duly conciliate the safety of the belligerent with that of the neutral party.

What definition of contraband, consulting reason alone, shall we adopt? Shall we say, that none but articles peculiar to war ought to receive this denomination? But is even powder *exclusively applicable* to war? Are nitre and sulphur, its chief ingredients, *peculiar* to war? Are they not all useful for other purposes; some of them in medicine, and other important arts? Shall we say, that none but articles prepared and organized for war, as their primary object, ought to have that character? But what substantial difference can reason know, between the supply to our enemy of powder, and that of sulphur and saltpetre, the easily convertible materials of this mischievous compound?

How would either of these definitions, or any other, comport with what those of our treaties which are thought unexceptionable, in this particular, have regulated, or with what is common in the treaties between other nations? Under which of them shall we bring horses and their furniture?

If we say that, in wars by land, these are instruments little less important than men, and for that reason ought to be comprehended, it may be asked in return, what can be more necessary in wars by sea than the materials of ships, and why should they not, for the like reasons, be equally comprehended?

In wars between maritime nations, who transfer its

calamities from the land to the ocean, and wage their most furious conflicts on that element, whose dominions cannot be attacked or defended without a superiority in naval strength, who moreover possess distant territories, the protection and commercial advantages of which depend upon the existence and support of navies, it is difficult to maintain, that it is against reason, or against those principles which regulate the description of contraband, to consider as such the materials which appertain to the construction and equipment of ships.

It is not a sufficient objection that these articles are useful for other purposes, and especially for those of maritime commerce. Horses are of primary utility in agriculture; and it has been seen that there are other articles indisputably on the list of contraband, which are entirely within the principle of that objection.

Rutherforth, a sensible modern writer,* after truly observing, "that the notion of contraband goods is of some latitude, so that it is not easy precisely to determine what are and what are not of this sort; that all *warlike stores* are certainly contraband, but that still the question returns, what are to be reckoned warlike stores?"—after noticing the division of articles by Grotius and the difficulties with regard to the third class—draws this conclusion, that "where a war *is carried on by sea* as well as by land, not only ships of war which are already built, but the materials for building or repairing of ships, will come under the notion of *warlike stores*." This is a precise idea, and, it must be confessed, on principle, not an irrational one.

* Institutes of Natural Law, Book II., Chaps. x., xix.

If we resort to the opinions which have been entertained and evidenced in our own country, they will be found to have given great extent to the idea of contraband. Congress, by an act of May the 8th, 1777, establishing the form of commissions for privateers, authorize them "to attack, subdue, and take all ships and other vessels whatever, carrying soldiers, arms, gunpowder, ammunition, *provisions*, or any other contraband goods, to any of the British armies or ships of war employed against the United States." And in their act of the 27th of November, 1780, acceding, in part, to the rule of the armed neutrality, they declare, that contraband shall be thereafter *confined* to the articles contained under this character, in our treaty with France; indicating, by this, their opinion that the list of those articles is abridged by that treaty. If the first-mentioned act was well founded (and there are strong reasons for it), it establishes that even provisions may be contraband, if going directly to invading fleets and armies; which affords an instance of their being so (analogous to the case heretofore put of a besieging army) in addition to the cases of places besieged, blockaded, or invested. And as to naval stores, I assert a belief, that the common opinion of those persons in this country whose contemplation had embraced the subject, included them in the catalogue of contraband.

Nevertheless, from the number of modern treaties which exclude from that list naval stores, and moreover from the manifest interest of nations, truly considered, to narrow the rights of war in favor of those of peace; this clause of the treaty, which takes a

different route, is to be regretted as pursuing the rigor of the law of nations. Still, however, it cannot be objected to, as a departure from the law; and agreeing with the course observed by Great Britain antecedent to the treaty, it does not place our trade in those articles upon a worse footing than it was, independent of the treaty.

The period of the negotiation was most unpropitious to a change for the better; in the midst of any maritime war, a belligerent nation, enjoying a naval superiority, was like to have been tenacious of a right which she supposed herself to possess to intercept naval supplies to her enemy. But in a war, in which it was more than ordinarily possible that the independent existence of a nation might depend on the retaining a naval superiority, it was to have been foreseen that she would not consent to relinquish such a right. The alternative was, to insert the article as it stands, or to omit it wholly.

Had it been omitted, the condition of naval stores would have been the same as with it. But our merchants would then have continued to be exposed to uncertain risks, which is always a great inconvenience. It is desirable, in similar cases, to have a fixed rule. Merchants can then accommodate their speculations to the rule; and causes of national contention are avoided.

It is in this view to be regretted, that the cases when provisions may be treated as contraband could not have been agreed upon; but as this was impracticable, the next best thing has been done, by establishing the certainty of compensation in all such cases. This gives

one important species of security, obviates one source of contention. And if really there may be other cases than the universally admitted ones, in which provisions can fairly be deemed contraband (as that designated by the act of Congress of May, 1777), the securing of compensation was truly a point gained by the article.

But while I confess, that the including of naval stores among contraband articles is an ineligible feature of the treaty, I ought to declare, that its consequences to the interests of the United States, as it regards the trade in those articles in time of war, do not appear to me important. War between other nations, when we are at peace, will always increase the demand for our bottoms, so as to require much additional building of vessels, and probably in that way to produce a more beneficial species of employment of the naval stores our country affords, than that of their exportation for sale.

The adversaries of the treaty are eagle-eyed to spy out instances in which it omits any favorable minutes which are found in our other treaties; but they forget to balance the account by particulars which distinguish it favorably from those treaties. Of this nature is the omission of horses from the list of contraband, and still more the salutary regulations, with regard to vessels and their cargoes going to places besieged, blockaded, or invested. I do not discover that these useful provisions, or their equivalents, are in either of our treaties with France, Holland, or Sweden.

It has been said, in reference to this article, "whenever the law of nations has been a topic for consideration, the result of the treaty accommodates Great

Britain, in relation to one or both of the republics at war with her, as well as in the abandonment of the rights and interests of the United States,"—and the following examples are given, to each of which will be annexed a reply.

I.—"American vessels, bound to Great Britain, are protected, by sea-papers, against French and Dutch searches; but when bound to France or Holland, are left exposed to British searches, without regard to ships' papers." The truth of this proposition depends on another, which is, that the sea-papers are to be absolutely conclusive; but reasons have been given for doubting this construction, which, it has been remarked, does not obtain in practice. And it is certainly a violent one, inasmuch as it puts it in the power of the neutral, to defeat the rights of the belligerent party, in points of great consequence to its safety.

II.—"American provisions, in American vessels, bound to the enemies of Great Britain, are left by the treaty to the seizure and use of Great Britain; but provisions, whether American or not, in American vessels, cannot be touched by the enemies of Great Britain." The construction of the treaty, upon which this difference is supposed, has been demonstrated to be erroneous. The difference, therefore, does not exist.

III.—"British property, in American vessels, is not subject to French or Dutch confiscation. French or Dutch property, in American vessels, is subject to British confiscation." This was the case before the treaty, which makes no alteration in the matter. Moreover, it is counterbalanced by this circumstance: that

American property, in British vessels, is subject to confiscation by France or Holland; but American property, in French or Dutch vessels, is not subject to confiscation by Great Britain.

IV.—"Articles of ship-building, bound to the enemies of Great Britain for the equipment of vessels of trade only, are contraband; bound to Great Britain, for the equipment of vessels of war, are not contraband." This, also, was the case before the treaty, which, consequently, has not, in this particular more than the former, produced any benefit to one party, to the prejudice of the other. I forbear to dwell upon the article of horses, as falling under a contrary discrimination; nor shall I insist on the additional circumstances, that all American goods not generally contraband, if going to a place besieged, blockaded, or invested by French or Dutch forces, are liable to confiscation by France or Holland; if going to a place besieged, blockaded, or invested by British forces, are not liable to confiscation by Great Britain.

Differences of these several kinds are the accidental results of the varying views of different contracting powers, and form slender grounds of blame or praise of the respective contracts made with them.

The form of the criticisms last stated leaves little doubt that it was designed to insinuate an intention in this article to favor the monarchs of Great Britain, at the expense of the republics of France and Holland. The candor of it may be judged of by the two facts: first, that it makes no alteration, in this view, in the antecedent state of things; and secondly, that the relative situation of Holland, as the enemy of

Great Britain, is subsequent to the adjustment of the article. CAMILLUS.

XXXIV.*

1796.

The remaining articles of the treaty principally relate to those maritime regulations that are usually inserted in modern treaties between commercial nations, and on that consideration, as well as from their evident utility in enabling us to distinguish with precision between what is and what is not lawful in relation to those points, they are entitled to our approbation; still, however, even some of these customary articles, whose object and meaning are so well understood, have been deemed exceptionable.

The first paragraph of the nineteenth article, in order to prevent injuries by men of war, or privateers, enjoins (as before noticed) all commanders of ships of war and privateers, and all other citizens or subjects, of either party, to forbear doing any damage to those of the other, or from committing any outrage against them; and declares that, if they act to the contrary, they shall be punishable, and, moreover, bound in their persons and estates to make full satisfaction and reparation for all damages, of whatsoever nature the same may be.

* John C. Hamilton says ("History of the Republic," VI., 273): "It is perceived . . . that the first twenty-two numbers, the original drafts of which are in Hamilton's autograph, were exclusively his. Of the remaining essays, ten, Nos. 23 to 30, both included, 34 and 35, were from another pen, with frequent alterations, interlineations, and additions by Hamilton. The residue of the numbers, being six, are also Hamilton's exclusively." Rufus King assisted Hamilton in the essays of Camillus, and to him the authorship of Nos. 34 and 35, as well as Nos. 23 to 30, inclusive, may be attributed.

These prohibitions are conformable with the laws of the United States. If, under color of authority, those to whom the same does not relate shall receive injury, the act, according to its circumstances, is an offence, for which the offender is not only answerable to his own country, but, moreover, to the injured party, to whom he is bound to make full and complete reparation.

The open and explicit views of the parties, and their mutual engagement to put this law in execution against all offenders, will be a salutary check upon the too frequent irregularities that occur in the course of war between maritime nations. The paragraph is a copy of a similar one contained in the fifteenth article of the commercial treaty between France and Great Britain, concluded in 1786, and agrees with the fourteenth article of our treaty with Holland. In order to guard still more effectually against the injuries to which the citizens and subjects may be exposed from the private ships of war of each other, the next paragraph stipulates that all commanders of privateers, before they receive their commissions, shall be subjected to give security, by at least two responsible sureties, who have no interest in the privateer, in the sum of fifteen hundred pounds sterling, or six thousand six hundred and sixty-six dollars; or, if the privateer is manned with more than one hundred and fifty men, in the sum of three thousand pounds sterling, or thirteen thousand three hundred and thirty-three dollars, to satisfy all damages and injuries committed by such privateers, her officers, or any of her men, against the tenor of the treaty, or the laws and instructions for the regulation

of their conduct; and in case of aggression the commission of such privateer shall be recalled and made void.

This particular regulation has been frequently introduced in modern treaties, and exists in this precise shape in the last treaty of commerce between France and Great Britain; I have found no instance where a larger sum has been mentioned. It has, with little consideration, been made an objection to this regulation, that the amount of the bonds is not adequate to compensate or satisfy the damages that may be committed by these privateers.

The preceding part of the article gives the injured party a remedy against the persons and estates of the aggressors; the bonds are not required for the exclusive purpose of being the fund to which the injured may have recourse for satisfaction, but principally for the purpose of excluding from the command of privateers those dissolute and irregular characters, who are not restrained by either moral or political ties, and for whose good behavior responsible and disinterested men would not become bondsmen. The same principle is developed in the civil administration of every nation. In cases of pecuniary trust, it is a common and useful precaution to require surety for the faithful discharge of the office; and the principal advantage of this regulation is to secure the employment of virtuous and upright officers. The amount of the bonds required on these occasions is sufficient for this purpose, though inferior to the property confided to them.

Thus the Treasurer of the United States, who has the custody of millions, gives bonds for only one hun-

dred and fifty thousand dollars, the collectors of New York and Philadelphia for fifty and sixty thousand dollars; sums very far short of the public money [of which they are in the receipt], yet sufficient to secure the public against characters of doubtful integrity. The adequacy of the sums [in the particular case] is moreover evidenced by the law and practice of our own country. In the resolution of Congress, of the third of April, 1776, which, so far as regards this point, remained in force throughout the American war, Congress required that the commander of every privateer, before his commission should be delivered to him, should give bonds, with sureties, to the President of Congress, in the sum of five thousand dollars, if the vessel was of or under one hundred tons; and of ten thousand dollars, if the vessel was upwards of one hundred tons, to observe the rules and instructions prescribed for their government. These sums are one quarter less than those required by the article before us.

The last paragraph, requiring the judges of the admiralty courts to furnish formal and duly authenticated copies of their proceedings in cases of the condemnation of vessels or cargoes belonging to the citizens or subjects of the parties, is pursuant to that reasonable course of proceeding which ought always in this and similar cases to prevail.

The twentieth article, which is in prevention of piracy, has the sanction of numerous precedents. A pirate is the common enemy of all mankind. All, therefore, should unite in refusing him assistance and refuge, and in the establishment of such regulations

relative to the sale of his plunder as, by shutting against him every market, may thereby annilihate the motives to his piracy.

The twenty-first article stipulates, that the citizens and subjects of the parties shall do no acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign state being an enemy to the other party. That the enemies of either nation shall not be allowed to invite, or endeavor to enlist, in their military service, any of the citizens or subjects of the other; and the laws prohibiting such offences are to be punctually executed. The article further stipulates, if any citizen or subject of either party has accepted of a foreign commission to arm a privateer against the other, it shall be lawful for the said party to treat and punish the said citizen or subject, *having such commission*, as a pirate.

The general tenor of this article is in conformity with the spirit of our preceding laws on this subject; it is, moreover, in perfect unison with the duties of neutrality; those duties which a just regard to the principles of integrity, as well as an enlightened pursuit of our own interests, require us faithfully to perform.

Two objections have been offered against this article: one that it precludes such of our citizens as, with a view of acquiring military knowledge, would otherwise engage as volunteers in foreign service; the other, that it [makes] every citizen and subject, of either party, who has accepted a foreign commission to arm a privateer against the other, and who shall be taken in possession of such commission, [liable] to be punished as a pirate.

In respect to the first objection, if, by a rigorous construction, the case is included within the prohibition, it should be remarked, that it is applicable only to such engagements as commence and are made in time of mutual war. If we have citizens who, with the view of military education, are inclined to engage in foreign service, though from past experience there is not much reason to conclude that the examples would be numerous, they have full scope, as I understand the article, in the periods of peace, to enter into any of the regular armies of Europe that they may prefer; and being thus engaged, they are free to make the campaigns of war against Great Britain, if that is their passion, without injuring this article. [The prohibition seems to be against engaging in the military service of a nation, previously in the condition of "*enemy*" to one of the parties.]

The second objection has even less plausibility than the first: the disingenuous means that have been used to excite a reprobation of this clause of the article, manifest the want of truth and patriotism of those who have employed them; passion and the spirit of opposition have asserted, that the provision before us is so extensive as to place the subordinate officers and private men, on board of a privateer, within the predicament of her commander; nay, that all persons, citizens or subjects of either nation, who would accept commissions [or enter, in any capacity] in a foreign army or navy, would, in consequence of this stipulation, be liable to be treated and punished as pirates. It is sufficient, after noticing these attempts to impose upon the public, to observe that the stipulation [*ex-*

pressly] confines the punishment in question to the commanders of privateers who, contrary to the laws of the land, and the clear and equitable obligations of the members of a neutral nation, shall be taken with such commission; and that it does not extend to the under-officers or crew, much less to such persons as, contrary to the preceding inhibition of the article, should accept commissions in a foreign army or navy. In respect to such misdemeanors in all cases (except that of equipping and commanding a privateer, which will expose the commander, when taken, to be punished as a pirate), the offence is cognizable only by the nation [within whose jurisdiction the offence is committed, or] of which the offender is a citizen, or subject; and, by our laws, is punishable only by fine and imprisonment.

[A perversion of the sense of the clause, stipulating, that "the law against all such offences and aggressions shall be punctually executed," has been attempted, though nothing can be more innocent or unexceptionable. Its plain meaning is, that each party, in the cases falling within its jurisdiction, shall faithfully put in execution its own laws against the offences and aggressions, in contravention of the article. A stipulation between the governments, to execute laws on a certain subject, can mean nothing else than that each shall execute its own laws on that subject, in the cases appertaining to its jurisdiction.]

Though most of the objections preferred against the treaty are marked with that illiberal spirit which characterizes the party who have unceasingly labored to bring into discredit the government of the country, yet

few of them have been less veiled than this, which condemns a stipulation intended to curb and restrain the few dissolute and daring characters who, from the least worthy of all motives that lead to military enterprise, might otherwise engage in this piratical warfare.

What virtuous citizen would feel himself justified in accepting such command? What must be the morals of those instructors who contend for a freedom to commit what humanity and honor forbid? Every treaty that we have concluded with other nations is enriched with this stipulation; not only our own treaties, but those between other nations contain it. How is it that we nowhere discover a trace of disapprobation, either on the part of our statesmen, or from an enlightened people, against a series of treaties, formed by different public ministers, and ratified by a succession of Congresses, each of which contains a provision that the crime of accepting a foreign commission to arm and command a privateer, against a nation with whom we are at peace, shall be treated and punished as piracy? Is it that our virtue has become less severe? our morality more indulgent? Or is it that our predecessors were less vigilant in defending the rights of our citizens, than the ostentatious patriots of the present day? But it is time to dismiss an objection entirely destitute of integrity and [decency].

CAMILLUS.

NO. XXXV.

1796.

The twenty-second article bears upon its face its own justification—it is pursuant to those [maxims

which enlightened moralists recommend, and just nations respect]. It prescribes a course of conduct the most likely to procure satisfaction for injuries, and to maintain peace, and is therefore entitled to the approbation of all good men and real patriots. [It is particularly valuable to a weak nation, or a nation in its infancy, as an additional guard against sudden and unforeseen attacks of more powerful rivals.]

The first paragraph of the twenty-third article provides for the hospitable reception of the public or national ships of war of the parties, in the ports of each other; and engages that the officers of such ships shall be free from insult, and treated with decorum and respect.

The practice which our Government has adopted in relation to these points, independent of parties, is agreeable to this provision.* And though the stipulation will be of less importance to us than it would be were we possessed of a respectable naval force, yet it may be useful. By our treaty with France, our ships of war have a right to enter their ports only in case of urgent necessity, and not freely and for mere convenience.

With Spain and Portugal we have no treaties, and, consequently, not an ascertained or perfect right to use their ports. Our navigation must be protected from the Barbary powers by force or by treaty. It is questionable whether the latter mode will prove effectual without the support of the former; Congress have therefore resolved to equip a small naval force,

* See Mr. Jefferson's letter of September 9, 1793, to Mr. Hammond; also his letter of the same date to Mr. Van Berckel.

for the special object of protecting our trade against the Algerine and the other Barbary powers. Some port convenient to the scene of its cruising will be of essential advantage to the efficiency and success of its employment; not only the ports of Great Britain, but likewise the port of Gibraltar, will, by this article of the treaty, be open to us; and our frigates will there be entitled to a hospitable reception, and their officers to that respect which shall be due to the commissions which they bear.

The other paragraph of this article provides, in case an American vessel, by stress of weather, danger from enemies, or other misfortune, should be obliged to seek shelter in any British port, into which, in ordinary cases, such vessels could not claim the right to be admitted, that she shall be hospitably received, permitted to refit, and to purchase such necessaries as she may want; and, by permission of the local government, to sell such part of her cargo as may be necessary to defray her expenses. Our treaty with France contains a similar provision; but the restrictions with which it is guarded are less than those of the article before us.

The twenty-fourth article stipulates that it shall not be lawful for any foreign privateers, commissioned by any nation at war with either of the parties, to arm the vessels, or to sell or exchange their prizes, in the ports of either of the parties; and that they shall not be allowed to purchase more provisions than shall be necessary to carry them to the nearest port of the nation from whom they received their commission; and the twenty-fifth article stipulates that the ships of war and privateers of either party may carry whithersoever

they please the ships and goods taken from their enemy; and that such prizes, on their arrival in the ports of the parties, shall not be searched, seized, detained, nor judicially examined touching the validity of their capture, but may freely depart; and furthermore, that no shelter or refuge shall be given in the ports of one of the parties to such as have made prizes upon the citizens or subjects of the other. Though the law of nations is explicit, that one nation having formed a particular stipulation with another, is not capable, by a subsequent treaty with a third nation, to do away or annul its former stipulations, but that the elder treaty, in such case, remains in full force, notwithstanding such posterior and contradictory treaty; yet, in order to remove all cavil on this point, and to maintain a scrupulous regard to good faith, even in appearance as well as in reality, and especially in relation to our treaty with France, the article further declares, "that nothing in the treaty contained shall be construed or operate contrary to former and existing public treaties with other sovereigns or states," and adds that neither of the parties, while they continue in friendship, will form any treaty inconsistent with this and the preceding article. [This last clause has been censured as an undue restraint, while it is in fact a mere redundancy; as long as a treaty between two nations continues in force, it is against good faith for either to form a treaty with another nation inconsistent with it; if the treaty is once disclosed, by whatever means, no treaty with another nation can be inconsistent with it. The clause, therefore, only converts into an express promise what without

it is an implied one, that the parties will not contravene their stipulations with each other by repugnant engagements with a third party. The disingenuity on this point has gone so far as to torture the clause into a positive stipulation against any treaty with another power conferring peculiar advantages of commerce upon that power. It is a sufficient reply to this that the clause is expressly confined to the twenty-fourth and twenty-fifth articles; determining nothing as to the other articles of the treaty. The general principle of this last objection has been sufficiently discussed elsewhere.]

The article concludes with a mutual engagement, that neither of the parties will permit the ships or goods of the other to be taken within cannon shot of the coast, nor in any of the bays, ports, or rivers of their territories; and in case of such capture, the party whose territorial rights are violated shall use his utmost endeavors to obtain satisfaction for the vessels or goods taken. This stipulation is conformable to the duty and practice of nations who have entered into no special engagements requiring the same, and agrees with a common provision in public treaties.

Hitherto we have prudently avoided granting to any nation a right to arm their privateers or to sell their prizes in our ports; our laws are explicit in prohibiting such equipments; and the exclusion thereof, contained in the twenty-fourth article, is agreeable to the declared policy of the country. We have engaged in our treaty with France to prohibit her enemies from selling their prizes within our ports; but not having engaged to permit France to sell her prizes therein, we were

free to agree with Great Britain, that her enemies shall likewise be prohibited from selling their prizes in our territory. A clause in the twenty-fifth article denies all refuge to ships of war and privateers that have made prizes on either of the parties; and the last clause of the twenty-fourth article stipulates that foreign privateers, enemies to either of the parties, shall not be allowed to purchase more provisions than sufficient to carry them to the nearest port of the nation from whom they received their commission.

These clauses will operate only against such nations as have not, by an elder treaty, secured a right of reception in the ports of the parties. Still, however, it is alleged that these articles violate our treaty with France. It has already been observed that the treaty contains a clear and explicit agreement of the parties, excepting from its operation all former existing public treaties. Our treaty with France is an antecedent and existing public treaty, and consequently excepted, in all its parts, from the operation of the treaty before us. Whatever right or privilege, therefore, is secured to France in virtue of that treaty, she will continue to enjoy, whether the same respects the reception of her public ships of war, privateers or prizes, in our ports, or the exclusion therefrom of those of her enemies.

Could there be a doubt on this point, the practice of other nations, and especially that of France, on the very point, would effectually remove it. The fifteenth and thirty-sixth articles of the commercial Treaty of Utrecht, between France and Great Britain, contain the same stipulations as the twenty-fourth and twenty-fifth articles of the treaty before us. That treaty was

in existence and force at the time of forming our treaty with France, yet France found no difficulty in the insertion of the same stipulations in her treaty with us. She could not have considered their insertion in the treaty with us as a violation of her treaty with Great Britain, otherwise good faith would have restrained her. The war that soon after took place between France and Great Britain, dissolved the Treaty of Utrecht. Our treaty with France remained in force; yet, in the year 1786, France and Great Britain entered into a commercial treaty, the sixteenth and fortieth articles of which renew the stipulations contained in the fifteenth and thirty-sixth articles of the Treaty of Utrecht.

If France was free, first to form these stipulations with us in 1778, notwithstanding her prior and existing treaty with Great Britain, and afterwards in 1786 to renew the same stipulations with Great Britain, we must be equally free in a treaty with the same, or any other power, to agree to similar stipulations. Both were free, and neither violates former engagements, by assenting, as we have done, to these stipulations in a posterior treaty.

It is further alleged, that these articles are injurious to the interest of the United States, because they prohibit, in certain cases, foreign privateers to rendezvous in our ports, and to sell within our territory the prizes they may have taken. If it is desirable to render our principal seaports and cities scenes of riot and confusion; if it is politic to divide our citizens, by infusing into their minds the hostile spirit with which the nations at war are animated against each other;

if we are prepared to see the prostration of public authority, and to behold the laws trampled upon by armed banditti; if we are ready to invite our citizens to abandon their regular and useful employments, and to engage, as adventurers, even against each other, in the pursuit of plunder, then is the objection well-founded, then is the restraint pernicious, then is the stipulation worthy of condemnation. But if to establish the reverse of all this, is the effort and aim of every wise and prudent government, the stipulation in question demands the approbation of all virtuous citizens.

But were none of these consequences to be apprehended from the free admission of the privateers of all nations engaged in war, and the permission to sell their plunder, it would, notwithstanding, be against the interests of the United States to allow the same. It is a sound commercial principle, that the interest of buyers, as well as sellers, is best promoted by a free competition. The great number of the sellers of foreign manufactures and productions affords the best market for the buyers. The great number of buyers of our productions affords the best market for the sellers. Foreign privateers are precarious sellers, and buyers only for their own consumption, They drive away and banish from our markets, both buyers and sellers. When our coasts are lined with foreign privateers that rendezvous in our ports, the merchant-ships of all nations, not excepting our own, will be liable to interruption, and discouraged from coming to our markets; and those of the belligerent powers will be generally excluded. Our markets might, perhaps,

derive supplies from the prizes that such privateers should take, so as, in some degree, to compensate for the deficiency that would proceed from the exclusion of foreign merchantmen; but this supply would be uncertain, irregular, ill-assorted, and partial, while the principal commercial detriment would exist without mitigation,—that of a partial or total destruction of foreign competition in the purchase of our agricultural and other productions.

If, moreover, it is the duty as well as the interest of the United States, to observe an exact and scrupulous neutrality, amidst the wars of other nations, one of the most efficacious means of effecting that purpose will be, to remove every temptation that might lead our citizens to an opposite course. No allurement would be more likely to seduce them from their duty than that which is offered by the expected gains of privateering; no avenue of political mischief should, therefore, be more carefully closed.

If these articles are exceptionable, in any respect, it is that, in imitation of the analogous articles of our treaty with France, they allow the privateers of the parties, in cases not inconsistent with former treaties, to rendezvous in, and their prizes to be brought into, each other's ports and harbors. It would, in my judgment, have been the true policy of the United States, as well as with the view of maintaining an impartial and decided neutrality in the wars of Europe, from a participation in which our remote situation, with [due] prudence, is an exemption, as likewise, in order to promote, in the most advantageous manner, our national prosperity, totally and for ever to have excluded

all foreign privateers and prizes from our ports and harbors.

But having entered into these stipulations with France, by which she has the use of all our ports against all other nations, we having the use of her ports only against those nations who have not an elder treaty with her, it would have manifested an unwise partiality to have refused to enter into similar stipulations with other nations who might desire them; accordingly they are found in others of our treaties with

as well as in that under consideration—another refutation of the objection to this last as being in these respects repugnant to that with France.

The twenty-sixth article provides, in case of a rupture between the parties, that the merchants and others of each nation, residing in the dominions of the other, may maintain and continue their trade during good behavior; in case, however, their conduct should become suspicious, they may be removed, and a twelve-month after the publication of the order of removal is to be allowed for that purpose; but this term is not to be granted to such persons as act contrary to law, or are guilty of any offence against the government; all such persons may be forthwith removed or sent out of the respective dominions of the parties. The residue of the article is calculated to ascertain the condition of the parties, when the rupture shall be deemed to exist. Each nation remains the exclusive judge of the foreigners among them, and will be able to decide from their behavior, how far their residence may be compatible with the public safety. In case of suspicion only,

that their residence will prove detrimental, they may order them to depart, reasonable time being allowed them to collect their effects. On the one hand, the article affords to the parties perfect security against the irregular and suspicious conduct of foreigners who may be among them on the breaking out of war, and, on the other hand, consults, with that liberality which the modern usage of nations sanctions, the safety and convenience of those who, under the faith of the respective governments, have chosen a residence in the dominions of the parties. Our treaties with France, Holland, and Sweden secure to the merchants of the respective parties a limited period, after the commencement of war, within which they may collect their effects, and remove ; the article before us, relative to this subject, is a transcript of the second article of the treaty of commerce, of 1786, between France and Great Britain. [The objection, therefore, to there being a certain term within which they cannot be removed upon bare suspicion, lies against our other treaties and against almost all the treaties of Europe for many years. The pretence to order away upon mere supposition would defeat all the stipulations, that allow a certain term to collect, sell, and remove debts and effects ; and for that reason could not be supported.

The remainder of the article, which gives an option to each party, either to request the recall, or *immediately to send home*, the ambassador of the other without prejudice to their mutual friendship and good understanding, is a valuable feature. The power "*immediately to send home*," without giving offence,

avoids much delicate embarrassment connected with an application to recall; it renders it easier to arrest an intriguing minister in the midst of a dangerous intrigue, and it is a check upon the minister by placing him more completely in the power of the government with which he resides. These last circumstances are particularly important to a republic, one of the chief dangers of which arises from its exposure to foreign intrigue and corruption.]

The twenty-seventh article, which provides for the delivery of all persons charged with murder or forgery committed within the jurisdiction of one party, and who have taken refuge within the territories of the other, is a regulation of peculiar worth between nations whose territories are contiguous to each other. Without such regulation, the ease with which the perpetrators of these atrocious crimes might escape punishment, especially on the frontiers, by passing out of one jurisdiction into the other, would, in a great measure, destroy the security against these offences, that arises from the fear and certainty of punishment. The provision that such delivery shall not be made unless upon the exhibition of such evidence of criminality as, according to the laws of the place where the fugitive shall be found, would justify his apprehension and commitment for trial, if the crime had been there committed, will prevent vexatious requisitions, and is a caution due to the rights of individuals.

The twenty-eighth and concluding article establishes, that the first ten articles of the treaty shall be permanent; that the remaining ones, except the twelfth, which, with the twenty-fifth, constitutes the

body of the commercial part of the treaty, shall be limited in their duration to twelve years ; and reciting, that the twelfth will end, by its own limitation, at the end of two years after the termination of the present European war, further establishes, that, within the last-mentioned term, and in time to perfect the business by the expiration of that term, the discussion of the subject of the twelfth article shall be renewed, and if the parties cannot agree on such new arrangement, concerning it, as may be satisfactory, that then all the said remaining articles (in other words, all but the first ten) shall cease and expire together. This article, which is an entirely independent one, obviates the doubt, affected to be entertained, whether the exception in the ratification, with regard to the twelfth article, did not do away with the stipulation, by which the continuance of the treaty, except the first ten articles, beyond the term of two years after the expiration of the war, is made to depend on a further arrangement of the West India trade. This separate article is positive and conclusive, absolutely annulling the treaty at that time, if such an arrangement be not made, and thereby places it in the power of either party so to manage the matter as to put an end to all the commercial part of it, except what relates to inland trade and navigation with the neighboring British territories, at the end of the short period of two years from the termination of the existing war. This alone is sufficient to confound all the high-charged declamations against the tendency of the treaty to ruin our trade and navigation.

CAMILLUS.

NO. XXXVI.

1796.

It is now time to fulfil my promise of an examination of the constitutionality of the treaty. Of all the objections which have been contrived against this instrument, those relating to this point are the most futile. If there be a political problem capable of complete demonstration, the constitutionality of the treaty, in all its parts, is of this sort.—It is even difficult to believe, that any man in either house of Congress, who values his reputation for discernment or sincerity, will publicly hazard it by a serious attempt to controvert the position.

It is, nevertheless, too much a fashion with some politicians, when hard pressed on the expediency of a measure, to intrench themselves behind objections to its constitutionality—aware that there is naturally in the public mind a jealous sensibility to objections of that nature, which may predispose against a thing otherwise acceptable, if even a doubt, in this respect, can be raised. They have been too forward to take advantage of this propensity, without weighing the real mischief of the example. For, however it may serve a temporary purpose, its ultimate tendency is, by accustoming the people to observe that alarms of this kind are repeated with levity and without cause, to prepare them for distrusting the cry of danger when it may be real: yet the imprudence has been such, that there has scarcely been an important public question, which has not involved more or less of this species of controversy.

In the present case, the motives of those who may

incline to defeat the treaty, are unusually strong for creating, if possible, a doubt concerning its constitutionality.

The treaty, having been ratified on both sides, the dilemma plainly is between a violation of the Constitution, by the treaty, and a violation of the Constitution by obstructing the execution of the treaty.

The VIth article of the Constitution of the United States declares, that "the Constitution and the laws of the United States, made in pursuance thereof, all *treaties made, or which shall be made, under the authority of the United States*, shall *be the supreme law of the land*, any thing in the constitution or laws of any State to the contrary notwithstanding." A law of the land, till revoked or annulled, by the competent authority, is binding, not less on each branch or department of the government than on each individual of the society. Each house of Congress collectively, as well as the members of it separately, are under a constitutional obligation to observe the injunctions of a pre-existing law, and to give it effect. If they act otherwise, they infringe the Constitution; the theory of which knows, in such case, no discretion on their part. To resort to first principles for their justification, in assuming such a discretion, is to go out of the Constitution for an authority which they cannot find in it; it is to usurp the original character of the people themselves; it is, in principle, to prostrate the government.

The cases must be very extraordinary that can excuse so violent an assumption of discretion. They

must be of a kind to authorize a revolution in government; for every resort to original principles, in derogation from the established Constitution, partakes of this character.

Recalling to view, that all but the first ten articles of the treaty are liable to expire at the termination of two years after the present war, if the objection to it in point of constitutionality cannot be supported, let me ask, who is the man hardy enough to maintain, that the instrument is of such a nature as to justify a revolution in government?

If this can be answered in the affirmative, adieu to all the securities which nations expect to derive from constitutions of government. They become mere bubbles, subject to be blown away by every breath of party. The precedent would be a fatal one; our government, from being fixed and limited, would become revolutionary and arbitrary; all the provisions which our Constitution, with so much solemnity, ordains "for forming a more perfect union, establishing justice, insuring domestic tranquillity, providing for the common defence, promoting the general welfare, and securing the blessings of liberty to ourselves and posterity," would evaporate and disappear.

Equally will this be the case, if the rage of party spirit can meditate, if the momentary ascendency of party, in a particular branch of the government, can effect, and if the people can be so deceived as to tolerate—that the *pretence* of a violation of the Constitution shall be made the instrument of its actual violation.

This, however, cannot be; there are already convinc-

ing indications on the very subject before us, that the good sense of the people will triumph over prejudice and the acts of party, that they will finally decide according to their true interest, and that any transient or partial superiority which may exist, if abused for the purpose of infracting the Constitution, will consign the perpetrators of the infraction to ruin and disgrace. But alas! what consolation would there be in the ruin of a party for the ruin of the Constitution?

It is time to enter on the momentous discussion. The question shall be examined in the four following views: 1. In relation to the theory of the Constitution. 2. In relation to the manner in which it was understood by the convention who framed it, and by the people who adopted it. 3. In relation to the practice upon a similar power in the Confederation. 4. In relation to the practice under our present Constitution, prior to the treaty with Great Britain. In all these views, the constitutionality of the treaty can be vindicated beyond the possibility of a serious doubt.

1. As to the theory of the Constitution. The Constitution of the United States distributes its powers into three departments, legislative, executive, judiciary. The first article defines the structure, and specifies the various powers, of the legislative department; the second article establishes the organization and powers of the executive department; the third article does the same with respect to the judiciary department; the fourth and fifth and sixth articles, which are the last, are a miscellany of particular provisions.

The first article declares that "all *legislative power* granted by the Constitution shall be vested in a

Congress of the United States, which shall consist of a Senate and a House of Representatives."

The second article, which organizes and regulates the executive department, declares that the "*executive power* shall be vested in a President of the United States of America"; and proceeding to detail particular authorities of the executive, it declares that the "President shall have power, by and with the advice and consent of the Senate, *to make treaties*, provided two-thirds of the senators present concur." There is in no part of the Constitution any explanation of this power to make treaties, any definition of its objects, or delineation of its bounds. The only other provision in the Constitution respecting it is in the sixth article, which provides, as already noticed, that all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land!—and this notwithstanding any thing in the Constitution or laws of any State to the contrary.

It was impossible for words more comprehensive to be used than those which grant the power to make treaties. They are such as would naturally be employed to confer a *plenipotentiary* authority. A power "to make treaties," granted in these indefinite terms, extends to all kinds of treaties, and with all the latitude which such a power, under any form of government, can possess; the power "*to make*" implies a power to act *authoritively* and *conclusively*, independent of the after-clause which expressly places treaties among the supreme laws of the land. The thing to be made is a treaty.

With regard to the objects of the treaty, there being

no specification, there is, of course, a *carte blanche.* The general proposition must, therefore, be, that whatever is a proper subject of compact, between nation and nation, may be embraced by a treaty between the President of the United States, with the advice and consent of the Senate, and the correspondent organ of a foreign state.

The authority being general, it comprises, of course, whatever cannot be shown to be necessarily an exception to it.

The only constitutional exception to the power of making treaties is, that it shall not change the Constitution; which results from this fundamental maxim, that a delegated authority cannot alter the constituting act, unless so expressly authorized by the constituting power. An agent cannot new-model his own commission. A treaty, for example, cannot transfer the legislative power to the executive department, nor the power of this last department to the judiciary; in other words, it cannot stipulate that the President, and not Congress, shall make laws for the United States,—that the judges, and not the President, shall command the national forces.

Again, there is also a *national* exception to the power of making treaties, as there is to every other delegated power, which respects abuses of authority in palpable and extreme cases. On natural principles, a treaty, which should manifestly betray or sacrifice the private interests of the state, would be null. But this presents a question foreign from that of the modification or distribution of constitutional powers. It applies to the case of the pernicious exercise of a power,

where there is legal competency. Thus the power of treaty, though extending to the right of making alliances offensive and defensive, might not be exercised in making an alliance so injurious to the state as to justify the non-observance of the contract.

Beyond these exceptions to the power, none occurs that can be supported.

Those which have been insisted upon, towards invalidating the treaty with Great Britain, are not even plausible. They amount to this: that a treaty can establish nothing between the United States and a foreign nation, which it is the province of the legislative authority to regulate in reference to the United States alone. It cannot, for instance, establish a particular rule of commercial intercourse between the United States and Great Britain; because it is provided in the Constitution, that Congress "*shall have power to regulate commerce with foreign nations.*" This is equivalent to affirming that all the objects upon which the legislative power may act, in relation to our country, are excepted out of the power to make treaties.

Two obvious considerations refute this doctrine: one, that the power to make treaties, and the power to make laws, are different things, operating by different means, upon different subjects; the other, that the construction resulting from such a doctrine would defeat the power to make treaties, while its opposite reconciles this power with the power of making laws.

The power to make laws is "the power of pronouncing authoritively the will of the nation as to all persons and things over which it has jurisdiction"; or

it may be defined to be "the power of prescribing rules binding upon all persons and things over which the nation has jurisdiction." It acts compulsively upon all persons, whether foreigners or citizens, and upon all things within the territory of such nation, and also upon its own citizens and their property without its territory in certain cases and under certain limitations. But it can have no obligatory action whatsoever upon a foreign nation, or upon any person or thing within the jurisdiction of a foreign nation.

The power of treaty, on the other hand, is the power by *agreement*, *convention*, or *compact*, to establish rules binding upon two or more nations, their respective citizens and property. The rule established derives its reciprocal obligation from promise, from the faith which the contracting parties pledge to each other, not from the power of either to prescribe a rule for the other. It is not here the will of a *superior* that commands; it is the consent of two independent parties that contract.

The *means* which the power of legislation employs are *laws* which it enacts, or rules which it enjoins; the *subject* upon which it acts is the nation of whom it is, and the persons and property within the jurisdiction of the nation. The *means* which the power of treaty employs are *contracts* with other nations, who may or may not enter into them; the *subjects* upon which it acts are the nations contracting, and those persons and things of each to which the contract relates. Though a treaty may effect what a law can, yet a law cannot effect what a treaty does. These discriminations are obvious and decisive; and however the operation of a treaty may,

in some things, resemble that of a law, no two ideas are more distinct than that of *legislating* and that of *contracting*.

It follows that there is no ground for the inference pretended to be drawn, that the legislative powers of Congress are excepted out of the power of making treaties. It is the province of the latter to do what the former cannot do. Congress (to pursue still the case of regulating trade) may regulate, by law, our own trade and that which foreigners come to carry on with us; but they cannot regulate the trade which we may go to carry on *in foreign* countries; they can give to us no rights, no privileges, there. This must depend on the will and regulations of those countries; and, consequently, it is the province of the power of treaty to establish the rules of commercial intercourse *between* foreign nations and the United States. The legislative may regulate our own trade, but treaty only can regulate the national trade between our own and another country.

The Constitution accordingly considers the power of treaty as different from that of legislation. This is proved in two ways: 1. That while the Constitution declares that all the *legislative* powers which it grants shall be vested in Congress, it vests the power of making treaties in *the President* with consent of the Senate. 2. That the same article by which it is declared that the *executive* power shall be vested in a President, and in which sundry executive powers are detailed, gives the power to make treaties to the President, with the auxiliary agency of the Senate. Thus the power of making treaties is placed in the

class of executive authorities; while the force of laws is annexed to its results. This agrees with the distribution commonly made by theoretical writers, though perhaps the power of treaty, from its peculiar nature, ought to form a class by itself.

When it is said that Congress shall have power to regulate commerce with foreign nations, this has reference to the distribution of the general legislative power of regulating trade between the national and the particular governments; and serves merely to distinguish the right of regulating our external trade, as far as it can be done by law, which is vested in Congress, from that of regulating the trade of a State within itself, which is left to each State.

This will the better appear from the entire clause. "The Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes," which is the same as if it had been said: The whole powers of regulating trade *by law* shall reside in Congress, except as to the trade within a State, the power to regulate which shall remain with such State. But it is clearly foreign to that mutual regulation of trade between the United States and other nations, which, from the necessity of mutual consent, can only be performed by treaty. It is indeed an absurdity to say, that the power of regulating trade by law is incompatible with the power of regulating it by treaty; since the former can, by no means, do what the latter alone can accomplish; consequently, it is an absurdity to say, that the *legislative* power of regulating trade is an exception to the power of making treaties.

Laws are the acts of legislation of a particular nation

for itself. Treaties are the acts of the legislation of several nations for themselves jointly and reciprocally. The legislative powers of one state cannot reach the cases which depend on the joint legislation of two or more states. For this, resort must be had to the *pactitious* power, or the power of treaty. This is another attitude of the subject, displaying the fallacy of the proposition, that the legislative powers of Congress are exceptions to, or limitations of, the power of the President, with the aid of the Senate, to make treaties.

CAMILLUS.

NO. XXXVII.

1796.

It shall now be shown that the objections to the treaty, founded on its pretended interference with the power of Congress, tend to render the power of making treaties, in a very great degree, if not altogether, nominal. This will be best seen by an enumeration of the cases of pretended interference.

1st.—The power of Congress to lay taxes is said to be impaired by those stipulations which prevent the laying of duties on particular articles; which also prevent the laying of higher or other duties on British commodities than on the commodities of other countries; and which restrict the power of increasing the difference of duties on British tonnage and on goods imported in British bottoms.

2d.—The power of Congress to regulate trade is said to be impaired by the same restrictions respecting duties, inasmuch as they are intended, and operate, as regulations of trade; by the stipulations against pro-

hibitions in certain cases; and, in general, by all the rights, privileges, immunities, and restrictions in trade, which are contained in the treaty; all which are so many regulations of commerce, which are said to encroach upon the legislative authority.

3d.—The power of Congress to establish a uniform rule of naturalization, is said to be interfered with by those provisions of the treaty which secure to the settlers, within the precincts of the British posts, the right of becoming citizens of the United States, and those which, in certain cases, remove the disability of alienism as to property.

4th.—The power of Congress "to define and punish piracies and felonies, committed on the high seas, and offences against the law of nations," is said to be contravened by those parts of the treaty which declare that certain acts shall be deemed piracy, which constitute certain other things offences, and stipulate the reciprocal punishment of them by each.

5th.—It is also said that the Constitution is violated in relation to that provision which declares, that "no money shall be drawn from the treasury but in consequence of appropriations made by law"; by those parts of the treaty which stipulate compensations to certain commissioners, and indemnifications to Great Britain, in certain cases to be adjusted and pronounced by the commissioners; and, generally, by all those parts which may involve an expenditure of money.

6th.—The Constitution is said to be violated in that part which empowers Congress to dispose of, and make all needful rules and regulations respecting, the *territory*, or other property of the United States, by those

provisions of the treaty which respect the adjustment of boundary in the cases of the rivers St. Croix and Mississippi.

Lastly.—The Constitution is said to be violated, in its provisions concerning the judiciary department, by those parts of the treaty which contemplate the confiding to the determination of commissioners certain questions between the two nations.

A careful inspection of the treaty, with these objections in view, will discover that of the twenty-eight articles which compose it, at least seventeen are involved in the charge of unconstitutionality; and that these seventeen comprise all the provisions which adjust past controversies, or establish rules of commercial intercourse between the parties. The other eleven, which are the 1st, 9th, 10th, 17th, 18th, 19th, 20th, 22d, 23d, 24th, and 28th, except the 1st, are made up of provisions which have reference to war; the first merely declaring that there shall be peace between the parties. And it is a question, even with respect to all of these, except the first and tenth, whether they also are not implicated in the charge; inasmuch as some of their dispositions have commercial relations. Is not this alone sufficient to bring under a strong suspicion the validity of the principles which impeach the constitutionality of the instrument?

It must have been observed that the argument in the last number is applicable to all the legislative powers of Congress, as well as to that of regulating trade, which was selected, by way of illustration, on the ground of its being common to all. Indeed the instance of the regulations of trade is that which is

most favorable to the opposite doctrine, since foreign nations are named in the clause; the true intent of which, however, has been explained.

The same reasoning, too, would extend the power of treaties to those objects which are consigned to the legislation of individual States; but here the Constitution has announced its meaning in express terms, by declaring, that the treaties which have been and shall be made under the authority of the United States, shall be the supreme law of the land, any thing in the Constitution or laws of any State to the contrary notwithstanding. This manifestly recognizes the supremacy of the power of treaties over the laws of particular States, and goes even a step further.

The obvious reason for this special provision, in regard to the laws of individual States, is, that there might otherwise have been room for question—whether a treaty of the Union could embrace objects, the internal regulation of which belonged to the separate authorities of the States. But with regard to the United States there was no room for a similar question.

The power of treaty could not but be supposed commensurate with all these objects to which the legislative power of the Union extended, which are the proper subjects of compacts with foreign nations.

It is a question among some theoretical writers—whether a treaty can repeal *pre-existing laws?* This question must always be answered by the particular form of government of each nation. In our Constitution, which gives, *ipso facto*, the force of law to treaties, making them equal with the acts of Congress, the

supreme law of the land, a treaty must necessarily repeal an antecedent law contrary to it; according to the legal maxim that "*leges posteriores priores contrarias abrogant.*"

But even in those forms of government, in which there may be room for such a question, it is not understood that a treaty containing stipulations which require the repeal of antecedent laws, is, on that account, unconstitutional and null. The true meaning is, that the antecedent laws are not, *ipso facto*, abrogated by the treaty; but the Legislature is, nevertheless, bound in good faith, under the general limitation stated in another place, to lend its authority to remove obstacles which previous laws might oppose to a fair execution of a treaty.

One instance of the inconsistency prevailing in the arguments against the treaty negotiated by Mr. Jay, is observable in this point. To get rid of the infractions of our treaty of peace with Great Britain by certain laws of particular States, it is strenuously maintained that treaties control the laws of States. To impeach the constitutionality of the treaty under consideration, it is objected that, in some points, it interferes with the objects of State legislation. The express provision of the Constitution in this particular, quoted above, has not been sufficient to check the rage for objection.

The absurdity of the alleged interferences will fully appear, by showing how they would operate upon the several kinds of treaties usual among nations. These may be classed under three principal heads: 1, treaties of commerce; 2, treaties of alliance; 3, treaties of peace.

Treaties of commerce are, of course, excluded; for every treaty of commerce is a system of rules devised to regulate and govern the trade between contracting nations; invading directly the exclusive power of regulating trade which is attributed to Congress.

Treaties of alliance, whether defensive or offensive, are equally excluded, and this on two grounds: 1. Because it is their immediate object to define a case or cases in which one nation shall take part with another in war, contrary, in the sense of the objection, to that clause of the Constitution which gives to Congress the power of declaring war; and 2. Because the succors stipulated, in whatever shape they may be, must involve an expenditure of money—not to say, that it is common to stipulate succors in money, either in the first instance or by way of alternative. It will be pertinent to observe incidentally, in this place, that even the humane and laudable provision in the seventeenth article, which all have approved, is within the spirit of the objection; for the effect of this is to restrain the power and discretion of Congress to grant reprisals, till there has been an unsuccessful demand of justice. Nothing can better illustrate the unreasonable tendency of the principle.

Treaties of peace are also excluded, or, at the least, are so narrowed as to be in the greatest number of cases impracticable. The most common conditions of these treaties are restitutions or cessions of territory, on one side or on the other, frequently on both sides—regulations of boundary—restitutions and confirmations of property—pecuniary indemnifications for injuries or expenses. It will, probably, not be easy to find a

precedent of a treaty of peace, which does not contain one or more of these provisions, as the basis of the cessation of hostilities, and they are all of them naturally to be looked for in an agreement which is to put an end to the state of war between conflicting nations.

Yet they are all precluded by the objections which have been enumerated: pecuniary indemnifications, by that which respects the appropriations of money; restitutions or cessions of territory or property, regulations of boundary, by that which respects the right of Congress to dispose of, and make all needful rules and regulations concerning the territory and property of the United States. It is to be observed, likewise, that cessions of territory are almost always accompanied with stipulations in favor of those who inhabit the ceded territory, securing personal privileges and private rights of property; neither of which could be acceded to on the principles of that objection, which relates to the power of naturalization; for this power has reference to two species of rights, those of privilege and those of property. An act allowing a foreigner to hold real estate is so far an act of naturalization; since it is one of the consequences of alienism, not to be able to hold real estate.

It follows, that if the objections which are taken to the treaty, on the point of constitutionality, are valid, the President, with the advice and consent of the Senate, can make neither a treaty of commerce nor alliance, and rarely, if at all, a treaty of peace. It is probable, that on a minute analysis, there is scarcely any species of treaty which would not clash, in some

particular, with the principle of those objections; and thus, as was before observed, the power to make treaties, granted in such comprehensive and indefinite terms, and guarded with so much precaution, would become essentially nugatory.

This is so obviously against the principles of sound construction; it, at the same time, exposes the Government to so much impotence in one great branch of political power, in opposition to a main intent of the Constitution; and it tends so directly to frustrate one principal object of the situation of a general government, the convenient management of our external concerns, that it cannot but be rejected by every discerning man who will examine and pronounce with sincerity. It is against the principles of sound construction; because these teach us, that every instrument is so to be interpreted, as that all the parts may, if possible, consist with each other, and have their effect. But the construction which is combated would cause the legislative power to destroy the power of making treaties. Moreover, if the power of the executive department be inadequate to the making of the several kinds of treaties which have been mentioned, there is, then, no power in the Government to make them; for there is not a syllable in the Constitution which authorizes either the legislative or judiciary departments to make a treaty with a foreign nation. And our Constitution would then exhibit the ridiculous spectacle of a government without a power to make treaties with foreign nations; a result as inadmissible as it is absurd; since, in fact, our Constitution grants the power of

making treaties, in the most explicit and ample terms, to the President, with the advice and consent of the Senate. On the contrary, all difficulty is avoided, by distinguishing the province of the two powers, according to ideas which have been always familiar to us, and which were never exposed to any question till the treaty with Great Britain gave exercise to the subtilties of party spirit.

By confining the power to make laws within its proper sphere, and restricting its actions to the establishment of rules for our own nation and those foreigners who come within our jurisdiction, and by assigning to the power of treaty the office of concerting those rules of mutual intercourse and connection, between us and foreign nations, which require their consent as well as our own, allowing to it the latitude necessary for this purpose, a harmonious agreement is preserved between the different powers of the Government—that to make laws, and that to make treaties; between the authority of the legislative and the authority of the executive department. Hence—

Though Congress, by the Constitution, have power to lay taxes, yet a treaty may restrain the exercise of it in particular cases. For a nation, like an individual, may abridge its moral power of action by agreement; and the organ charged with the legislative power of a nation may be restrained in its operation by the agreements of the organ of its *federative* power, or power to contract. Let it be remembered, that the nation is the *constituent*, and that the executive, within its sphere, is no less the organ of its will than the Legislature.

Though Congress are empowered to make regulations of trade, yet they are not exclusively so empowered; but regulations of trade may also be made by treaty, and, where other nations are to be bound by them, must be made by treaty.

Though Congress are authorized to establish a uniform rule of naturalization, yet this contemplates only the ordinary cases of internal administration. In particular and extraordinary cases, those in which the pretensions of a foreign government are to be managed, a treaty may also confer the rights and privileges of citizens; thus the absolute cession and plenary dominion of a province or district possessed by our arms in war may be accepted by the treaty of peace on the condition that its inhabitants shall, in their persons and property, enjoy the privileges of citizens.

The same reasoning applies to all the other instances of supposed infraction of the legislative authority: with regard to piracies and offences against the laws of nations, with regard to expenditures of money, with regard to the appointment of officers, with regard to the judiciary tribunals, with regard to the disposal and regulation of the national territory and property. In all these cases, the power to make laws and the power to make treaties are concurrent and co-ordinate. The latter, and not the former, must act, where the co-operation of other nations is requisite.

As to what respects the commissioners agreed to be appointed, they are not, in a strict sense, *officers*. They are *arbitrators* between the two countries. Though in the Constitutions, both of the United States and of most of the individual States, a particular

mode of appointing officers is designated, yet, in practice, it has not been deemed a violation of the provision to appoint commissioners or special agents for special purposes in a different mode.

As to the provision, which restricts the issuing of money from the treasury to cases of appropriation by law, and which, from its intrinsic nature, may be considered as applicable to the exercise of every power of government, it is, in no sort, touched by the treaty. In the constant practice of the Government, the cause of an expenditure, or the contract which incurs it, is a different thing from the appropriation for satisfying it. Thus the salary of a public officer is fixed by one law, the appropriation for its payment by another. So, the treaty only stipulates what may be a cause of expenditure. An appropriation by law will still be requisite for actual payment.

As to the disposal and regulation of the territory and property of the United States, this will be naturally understood of dispositions and regulations purely domestic, and where the title is not disputed by a foreign power. Where there are interfering claims of foreign powers, as neither will acknowledge the right of the other to decide, treaty must directly or indirectly adjust the dispute.

So far then it is from being true, that the power of treaty can extend to nothing upon which, in relation to ourselves, the legislative power may act, that it may rather be laid down as a general rule, that a treaty may do between different nations whatever the legislative power of each may do with regard to itself. The exceptions to this rule are to be deduced from the

unfitness and inconvenience of its application to particular cases, and are of the nature of abuses of a general principle.

In considering the power of legislation in its relations to the power of treaty, instead of saying that the objects of the former are excepted out of the latter, it will be more correct, indeed it will be entirely correct, to invert the rule, and to say that the power of treaty is the power of making exceptions, in particular cases, to the power of legislation. The stipulations of treaty are, in good faith, restraints upon the exercise of the last-mentioned power. Where there is no treaty, it is completely free to act. Where there is a treaty, it is still free to act in all the cases not specially excepted by the treaty. Thus, Congress are free to regulate trade with a foreign nation, with whom we have no treaty of commerce, in such manner as they judge for the interest of the United States; and they are also free so to regulate it with a foreign nation with whom we have a treaty, in all the points which the treaty does not specially except. There is always, therefore, great latitude for the exercise of the legislative power of regulating trade with foreign nations, notwithstanding any treaties of commerce which may be formed.

The effects of a treaty to impose restraints upon the legislative powers may, in some degree, be exemplified by the case of the compacts which the Legislature itself makes, as with regard to the public debt. Its own compacts are, in good faith, exceptions to its power of action. Treaties with foreign powers, for obvious reasons, are much stronger exceptions.

CAMILLUS.

NO. XXXVIII.—AND LAST.

1796.

The manner in which the power of treaty, as it exists in the Constitution, was understood by the convention in framing it, and by the people in adopting it, is the point next to be considered.

As to the sense of the convention, the secrecy with which their deliberations were conducted does not permit any formal proof of the opinions and views which prevailed in digesting the power of treaty. But from the *best opportunity of knowing the fact*, I aver, that it was understood *by all* to be the intent of the provision to give to that power the most ample latitude—to render it competent to all the stipulations which the exigencies of national affairs might require; competent to the making of treaties of alliance, treaties of commerce, treaties of peace, and every other species of convention usual among nations; and competent, in the course of its exercise for these purposes, to control and bind the legislative power of Congress. And it was emphatically for this reason that it was so carefully guarded; the co-operation of two thirds of the Senate, with the President, being required to make any treaty whatever. I appeal for this, with confidence, to every member of the convention—particularly to those in the two houses of Congress. Two of these are in the House of Representatives, Mr. Madison, and Mr. Baldwin. It is expected by the adversaries of the treaty, that these gentlemen will, in their places, obstruct its execution. However this may be, I feel a confidence that neither of them will deny the assertion I have made. To suppose them capable of such a

denial were to suppose them utterly regardless of truth. But though direct proof of the views of the convention on the point cannot be produced, yet we are not wholly without proof on this head.

Three members of the convention dissented from the Constitution: Mr. Mason, Mr. Gerry, and Mr. Randolph. Among the reasons for his dissent, published by Mr. Mason, we find this clause: "By declaring all treaties supreme laws of the land, the Executive and Senate have, *in many cases*, an *exclusive power of legislation*, which might have been avoided by proper distinctions with respect to treaties, and *requiring the assent of the House of Representatives* where it could be done with safety." This shows the great extent of the power, in the conception of Mr. Mason: *in many cases* amounting to an *exclusive power of legislation;* nor did he object to the extent, but only desired that it should have been further guarded, by certain distinctions, and by requiring, in certain cases, the assent of the House of Representatives.

Among the objections to the Constitution, addressed by Mr. Gerry to the Legislature of Massachusetts, we find one to have been, "that treaties of the *highest importance* might be formed by the President, with the advice of two thirds of a *quorum* of the Senate." This shows his idea of the magnitude of the power; and impliedly admitting with Mr. Mason, the propriety of its extent, he seems only to have desired that the concurrence of the Senate should have embraced two thirds of the *whole body*, instead of two thirds of a *quorum*. But how small and how insignificant would the power of treaty be, according to the doctrine lately promulgated, with regard to its constitutional limit?

As to the sense of the community in the adoption of the Constitution, this can only be ascertained from two sources: the writings for and against it, and the debates in the several State conventions, while it was under consideration.

I possess not, at this moment, materials for an investigation, which would enable me to present the evidence they afford; but I refer to them, with confidence, for proof of the fact, that the organization of the power of treaty in the Constitution was attacked and defended with an admission on both sides, of its being of the character which I have assigned to it. Its great extent and importance—its effect to control, by its stipulations, the legislative authority, were mutually taken for granted, and upon this basis it was insisted, by way of objection, that there were not adequate guards for the safe exercise of so vast a power; that there ought to have been reservations of certain rights, a *better* disposition of the power to impeach, and a participation, general or special, of the House of Representatives in the making of treaties.

The reply to these objections, acknowledging the delicacy and magnitude of the power, was directed to show that its organization was a proper one, and that it was sufficiently guarded.*

* *The Federalist*, No. XLII., [No. 42 of *The Federalist* was written by Madison, hence the peculiar aptness of the quotation at this time, when Madison was the leader of the opposition. No. 64 was by Jay.—ED.] has these passages: "The power to make treaties and to receive and send ambassadors, speak their own propriety; both of them are comprised in the articles of confederation, *with the difference only* that the former is *disembarrassed* by the plan of the convention, of an exception by which treaties might be substantially frustrated by regulations of the States." This plainly alludes to the *proviso* which has been cited and commented upon. "It is true that when treaties of commerce stipulate for the nominal appoint-

The manner of exercising a similar power under the *Confederation* shall now be examined.

ment of consuls, the admission of foreign consuls may fall within the power of making commercial treaties." And in number LXIV. are these passages: "The power of making treaties is an important one, especially *as it relates to war, peace, and commerce;* and it should not be delegated but in such a mode and with such precautions as will afford the *highest security*, that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good." "There are few who will not admit, that the affairs of *trade* and *navigation* should be regulated by a system cautiously formed and steadily pursued, and that both our treaties and our laws should correspond with and be made to promote it." "Some are displeased with it (that is, the power of treaty), not on account of any errors or defects in it, but because, as the treaties, when made, are to have the force of laws, they should be made only by men invested with legislative authority; others, though content that treaties should be made in the mode proposed, are averse to their being the *supreme law of the land.*"

It is generally understood that two persons were concerned in the writings of these papers, who, from having been members of the convention, had a good opportunity of knowing its views—and were under no temptation at that time, in this particular, to misrepresent them. [This is a curious statement, for Jay was not a member of the convention, and *The Federalist* had, of course, three authors. It would seem to imply that Hamilton then (1796) thought himself the author of No. 64. See introduction to *Federalist* Vol. IX.—ED.]

In the *address* and reasons of dissent of the minority of the convention of Pennsylvania to their constituents, they state, that they had suggested the following proposition, among others, for an *amendment* to the Constitution: "That no treaty which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid *until* such laws shall be repealed or made conformable to such treaty." This shows that it was understood that the power of treaty in the Constitution extended to abrogating even pre-existing laws of the United States, which was thought exceptionable; while no objection was made to the idea of its controlling future exercises of the legislative power. The same address states, in another place, that the President and Senate "may form treaties with foreign nations, that may control and abrogate the Constitution and laws of the several States."

In the 2d volume of the Debates of the Convention of Virginia, which is the only part I possess, there are many passages that show the great extent of the power of treaty in the opinion of the speakers on both sides. As quotations would be tedious, I will content myself with referring to the papers where they will be found, viz., 91, 99, 131, 137, 143, 147, 150, 186. It will, in particular, appear, that while the opposers of the Constitution denied the power of the House of Representatives to break in upon or control the power of treaties, the friends of the Constitution did not affirm the contrary, but merely contended that the House of Representatives might check by its *influence* the President and Senate—on the subject of treaties.

To judge of the similarity of the power it will be useful to quote the terms in which it was granted. They are these: "The United States in Congress assembled shall have the sole and exclusive right and power of *entering into treaties and alliances, provided that no treaty of commerce* shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever." (Article IX.)

It will not be disputed that the words "treaties and alliances" are of equivalent import, and of no greater force than the single word "treaties." An alliance is only a species of treaty, a particular of a general;—and the power of "entering into treaties," which terms confer the authority under which the former government acted, will not be pretended to be stronger than the power "to make treaties," which are the terms constituting the authority under which the present government acts; it follows, that the power, respecting treaties, under the former, and that under the present government, are similar.

But though similar, that under the present government is more comprehensive; for it is divested of the restriction in the provision cited above, and is fortified by the express declaration, that its acts shall be valid notwithstanding the constitution or laws of any State. This is evidence (as was the fact) of a disposition in the convention to disembarrass and reinforce the power of treaty. It ought not to pass unnoticed, that an important argument results from the *proviso*, which

accompanies the power granted by the Confederation as to the natural extent of this power. The declaration that no treaty of commerce shall be made restraining the legislative power of a State from imposing such duties and imposts on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever, is an admission (1) that the general power of entering into treaties included that of making treaties of commerce, and (2) that without the limitation in the proviso, a treaty of commerce might have been made which would restrain the legislative authority of the State in the points interdicted by that proviso.

Let it not be said, that the proviso, by implication, granted the power to make treaties of commerce, under which Congress afterwards acted; for besides that this is inconsistent with the more obvious meaning of the clause, the first article of the Confederation leaves to the States individually every power not *expressly* delegated to the United States in Congress assembled. The power of Congress, therefore, to make a treaty of commerce, and every other treaty they did make, must be vindicated on the ground that the express grant of power to enter into treaties and alliances is a *general*, which necessarily included as *particulars* the various treaties they have made, and the various stipulations of those treaties.

Under this power, thus granted and defined, the alliance with France was contracted; guaranteeing, in the case of a defensive war, her West India possessions, and when the *casus fœderis* occurs, obliging the

United States to make war for the defence of those possessions, and consequently, to incur the expenses of war.

Under the same power, treaties of commerce were made with France, the Netherlands, Sweden, and Prussia. Besides that every treaty of commerce is necessarily a *regulation* of commerce between the parties, it has been shown, in the antecedent comparison of those treaties * with that lately negotiated, that they produce the specific effects of restraining the legislative power from imposing higher or other duties on the articles of those nations than on the like articles of other nations, and from extending prohibition to them which shall not equally extend to other nations the most favored; and thus abridge the exercise of the legislative power to tax, and the exercise of the legislative power to regulate trade.

These treaties likewise define and establish the same case of piracy, which is defined in the treaty with Great Britain. Moreover, the treaty with France, as has been elsewhere shown, with regard to the rights of property, *naturalizes the whole French nation.*

The consular convention with France, negotiated, likewise, under the same power, grants to the consuls of that country various authorities and jurisdiction, some of a *judicial nature*, which are actual transfers to them of portions of the internal jurisdiction and ordinary judiciary power of the country, the exer-

* Articles 2d, 3d, and 4th of treaty with France, 2d, 3d, and 20th of treaty with Russia, 2d and 3d of treaty with Holland, 3d and 4th of treaty with Sweden.

cise of which our government is bound to aid with its whole strength. It also grants exemptions to French consuls from certain kinds of taxes, and to them, and French citizens, from all personal service; all which are extremely delicate interferences with our internal policy and ordinary jurisdiction.

Under the same power, the treaty with Morocco was formed, which, besides various other regulations relative to war, and several relative to trade, contains the rule, that neither party shall make war without a previous demand of reparation; in restraint of the general discretionary power of Congress to declare war.

Under the same power, the treaty of peace with Great Britain was made. This treaty contains the establishment of a boundary line between the parties, which, in part, is arbitrary, and could not have been predicated upon precise antecedent right. It also prohibits the future confiscation of the property of adherents to Great Britain; declares that no person shall, on account of the part he took in the war, suffer any future loss or damage in his person, liberty, or property, and provides for the release of such persons from confinement, and the discontinuance of prosecutions against them.

It is difficult to conceive a higher act of control, both of the legislative and judiciary authority, than by this article. These provisions are analogous, in principle, to those stipulations which, in the second and ninth articles of the treaty under examination, have given occasion to constitutional objection.

Under the same power, various treaties with In-

dians, inhabiting the territory of the United States, have been made, establishing arbitrary lines of boundary with them, which determine the right of soil on the one side and on the other. Some of these treaties proceed on the principle of the United States having conquered the Indian country, and profess to make gratuitous concessions to them of the lands which are left to their occupation. There is also a feature of importance common to these treaties, which is the withdrawing of the protection of the United States from those of their citizens who intrude on Indian laws, leaving them to be punished at the pleasure of the Indians.

Hence it appears that, except as to the stipulations for appointing commissioners, the treaties made under the Confederation contain all the features, identically or by analogy, which create constitutional objections to the treaty before us: they restrain, in certain instances, the legislative power to lay taxes; they make numerous and important regulations of trade; they confer the benefit of naturalization as to property; they define cases of piracy; they create causes of expenditure; they direct and modify the power of war; they erect, *within the country*, tribunals unknown to our constitutions and laws, in cases to which these are competent—whereas the treaty with Great Britain only provides for the appointment of *arbitrators* in cases to which our tribunals and laws are incompetent; and they make dispositions concerning the territory and property of the United States.

It is true, that some of the treaties made under the

former government, though subsequent to the proposing of the articles of confederation to the States, were prior to the final adoption of these articles; but still it is presumable that the treaties were negotiated with an eye to the powers of the *pending* national compact. Those with Great Britain, Sweden, Russia, and Morocco, and the convention with France, were posterior to the completion of that compact.

It may, perhaps, be argued that a more extensive construction of the power of treaty in the Confederation, than in our present Constitution, was countenanced by the union in the same body of legislative powers with the power of treaty. But this argument can have no force, when it is considered that the principal legislative powers, with regard to the objects embraced by the treaties of Congress, were not vested in that body, but remained with the individual States. Such are the power of *specific* taxation, the power of regulating trade, the power of naturalization, etc.

If in theory the objects of legislative power are excepted out of the power of treaty, this must have been equally, at least, the case with the legislative powers of the State governments as with those of the United States. Indeed the argument was much stronger for the objection, where distinct governments were the depository of the legislative power, than where the same government was the depository of that power and of the power of treaty. Nothing but the intrinsic force of the power of treaty could have enabled it to penetrate the separate spheres of the State governments. The practice under the Confed-

eration for so many years, acquiesced in by all the States, is, therefore, a conclusive illustration of the power of treaty, and an irresistible refutation of the novel and preposterous doctrine which impeaches the constitutionality of that lately negotiated. If the natural import of the terms used in the Constitution were less clear and decisive than they are, that practice is a commentary upon them, and fixes their sense. For the sense in which certain terms were practised upon in a prior constitution of government, must be presumed to have been intended, in using the like terms in a subsequent constitution of government for the same nation.

Accordingly, the practice under the present government, before the late treaty, has corresponded with that sense.

Our treaties with several Indian nations regulate and change the boundaries between them and the United States. And in addition to compensations in gross, they stipulate the payment of certain specific and perpetual annuities. Thus a treaty in August, 1790, with the Creeks (article 5) promises them the yearly sum of one thousand five hundred dollars. And similar features are found in subsequent treaties with the Six Nations, the Cherokees, and the Northwestern Indians. This last has *just* been ratified by the *unanimous voice* of the Senate. It stipulates an annuity of 9,500 dollars, and relinquishes to the Indians a large tract of land which they had, by preceding treaties, ceded to the United States.

Hence we find that our former treaties under the present government, as well as one subsequent to

that under consideration, contradict the doctrine set up against its constitutionality, in the important particulars of making dispositions concerning the territory and property of the United States, and binding them to raise and pay money. These treaties have not only been made by the President, and ratified by the Senate, without any impeachment of their constitutionality, but the House of Representatives has heretofore concurred, and without objection, in carrying them into effect, by the requisite appropriation of money.

The consular convention of France stands in a peculiar predicament. It was negotiated under the former government, and ratified under the present; and so may be regarded as a treaty of both governments, illustrative of the extent of the power of treaty in both. The delicate and even the extraordinary nature of the provisions it contains, have been adverted to. Though all reflecting men have thought ill of the propriety of some of them, as inconveniently breaking in upon our interior administration, legislative, executive, and judiciary, only acquiescing in them from the difficulty of getting rid of stipulations entered into by our public agents under competent powers, yet no question has been heard about their constitutionality. And Congress have, by law, assisted their execution by making our judicial tribunals, and the public force of the country, auxiliary to the decrees of the foreign tribunals which they authorize within our territory.

If it should be said that our Constitution, by making all former treaties and engagements as obligatory

upon the United States, under that Constitution, as they were under the Confederation, rendered the ratification of the convention a matter of necessity, the answer is, that either the engagements which it contracted were already conclusive, or they were not; if the former, there was no need of a ratification; if the latter, there was no absolute obligation to it. And, in every supposition, a ratification by the President, with the consent of the Senate, could have been predicated only upon the power given in the present Constitution in relation to treaties; and to have any validity, must have been within the limit of that power.

But it has been heretofore seen that the inference from this instrument is no less strong, if referred to the power under the Confederation, than if referred to the power under the present Constitution.

How happens it, that all these invasions of the Constitution, if they were such, were never discovered, and that all the departments of the government, and all parties in the public councils, should have co-operated in giving them a sanction? Does it not prove that all were convinced, that the power of treaty applied in our exterior relations to objects which, in the ordinary course of internal administration and in reference to ourselves, were of the cognizance of the legislative power? and particularly that the former was competent to bind the latter in the delicate points of raising and appropriating money? If competent to this, what legislative power can be more sacred, more out of its reach?

Let me now ask (and a very solemn question it is,

especially for those who are bound by oath to support the Constitution), has it not been demonstrated that the provisions in the treaty are justified by the true and manifest interpretation of the Constitution—are sanctioned by the practice upon a similar power under the Confederation, and by the practice in other instances under the present government?

If this has been demonstrated, what shall we think of the candor and sincerity of the objections which have been erected on the basis of a contrary supposition? Do they not unequivocally prove, that the adversaries of the treaty have been resolved to discredit it by every artifice they could invent? That they have not had truth for their guide, and consequently are very unfit guides for the public opinion, very unsafe guardians of the public welfare?

It is really painful and disgusting to observe sophisms so miserable as those which question the constitutionality of the treaty, retailed to an enlightened people, and insisted upon with so much seeming fervency and earnestness. It is impossible not to bestow on sensible men who act this part, the imputation of hypocrisy. The absurdity of the doctrine is too glaring to permit even charity itself to suppose it sincere. If it were possible to imagine that a majority in any branch of our government could betray the Constitution, and trifle with the nation, so far as to adopt and act upon such a doctrine, it would be time to despair of the republic.

There would be no security at home, no respectability abroad. Our constitutional charter would become a dead letter. The organ of our government

for foreign affairs would be treated with derision whenever he should hereafter talk of negotiation or treaty. May the great Ruler of nations avert from our country so grievous a calamity!

CAMILLUS.

FOREIGN POLICY.

FOREIGN POLICY.

HAMILTON TO WASHINGTON.

NEW YORK, September 4, 1795.

SIR :—I had the pleasure of receiving, two days since, your letter of the 31st ultimo. A great press of business, and an indifferent state of health, have put it out of my power sooner to attend to it.

The incidents which have lately occurred have been in every way vexatious and untoward. They render indispensable a very serious, though calm and measured, remonstrance from this government, carrying among others this idea, that it is not sufficient that the British Government entertain toward our nation no hostile disposition ; 't is essential that they take adequate measures to prevent those oppressions of our citizens, and of our commerce, by their officers and courts, of which there are too frequent examples, and by which we are exposed to suffer inconveniences too nearly approaching to those of a state of war. A strong expectation should be signified of the punishment of Capt. Holmes, for the attempt to violate an ambassador passing through our territory, and for the hostile and offensive menaces which he has thrown out. The dignity of our country, and the preservation

of the confidence of the people in the government, require both solemnity and seriousness in these representations.

As to the negotiation for alteration in, and additions to, the treaty, I think it ought to embrace the following objects:

A new modification of the 12th article, so as to extend the tonnage, and restrain the prohibition to export from this country, to articles of the growth or production of the British islands. The more the tonnage is extended the better; but I think ninety tons would work advantageously, if nothing better could be done. I had even rather have the article with seventy, as it stood, than not at all, if the restriction on exportation is placed on the proper footing. Some of our merchants, however, think its value would be questionable at so low a tonnage as seventy. It would be also desirable that the article should enumerate the commodities which may be carried to, and brought from, the British islands. This would render it more precise and more intelligible to all.

Great Britain may have substantial security for the execution of the restriction, if it be stipulated on our side: "That a law shall be passed and continued in force during the continuance of the article, prohibiting the exportation in vessels of the United States, of any of the articles in question, if brought from British islands, on pain of forfeiture of the vessel, for wilful breach of the law; and that the same law shall provide that the regulations contained in our laws respecting drawbacks, shall be applied to all exportations in our vessels of the articles in question, to ascertain that they were imported into the United States from other

than British islands, and this whether a drawback of duty is required or not by the exporter; and shall also provide that all such articles exported in our vessels from the United States, shall be expressed in the clearance, with a certificate of the collector endorsed, specifying that he has carefully examined, according to the treaty and to the law, the identity of the articles exported, and that it did *bona fide* appear to him that they had not been imported from any British island or islands." This security is the greatest difficulty in the case, and would, in my opinion, be given by a provision similar to the foregoing.

It would be a very valuable alteration in the 13th article, if a *right could be stipulated* for the United States to go with articles taken in the British territories in India to other parts of Asia. The object of the present restriction upon us to bring them to America was, I believe, to prevent our interference with the British East India Company in the European trade in India goods. If so, there could be no objection to our having a right to carry commodities from the British territories to other parts of Asia. But if all this latitude cannot be obtained, it would be a great point gained to have a right to carry them thence to China. It is a usual and beneficial course of the trade to go from the United States to *Bombay*, and take in there a freight for *Canton*, purchase at the last place a cargo of teas, etc.

It would be well if that part of the 15th article, which speaks of *countervailing* duties, could be so explained as to fix its sense. I am of opinion that its only practicable construction is, and ought to be, that they may lay on the *exportation* from their *European*

dominions, in vessels of the United States, the *same additional* duty on articles which we lay on the *importation* of the *same articles* into the United States in *British vessels*. But the terms of the clause are vague and general, and may give occasion to set up constructions injurious and contentious.

As to the more exact equalization of duties, of which this article speaks, it is a ticklish subject, and had better, I think, be left alone.

It would be right that it should be expressly agreed that wherever our vessels pay, in the ports of Great Britain, higher charges than their own [illegible] proportional reduction shall be made out of [illegible] of tonnage which may be laid on our vessels [illegible] teract the difference of tonnage on theirs in [illegible]

The 18th article is really an unpleasant [illegible] though there is, I fear, little chance of alter[illegible] the better, it may be necessary, for the justifi[illegible] the President, to attempt it. The standard to [illegible] approached by us as nearly as possible is that in our treaty with France. As to the point of free ships making free goods, though it be desirable to us to establish it if practicable—and it ought to be aimed at, —yet I neither expect that it will be done at present, nor that the *great maritime powers* will be disposed to suffer it to become an established rule, and I verily believe that it will be very liable, though stipulated, to be disregarded, as it has been by France through the greater part of the present war. But naval stores and provisions ought, if possible, to be expressly excluded from the list of contraband, except when going to a blockaded or besieged port, town, or fortress, or to a fleet or army engaged in a military operation, for

I can imagine no other cases in which there is a just pretence to make *provisions* contraband.

Some provision for the protection of our seamen is infinitely desirable. At least Great Britain ought to agree that no seaman shall be impressed out of any of our vessels at sea, and that none shall be taken out of such vessel in any of her colonies which were in the vessel *at the time of her arrival* at such colony. This provision ought to be pressed with energy as one unexceptionably just, and at the same time safe [redacted]eat Britain.

[redacted]affair of the negroes, to give satisfaction, may be [redacted]ed, but with caution and delicacy. The reso- [redacted]roposed in the Senate will afford a good [redacted] for this.

[redacted] the crowd of loose suggestions respecting the [redacted]which have no reasonable foundation, it would [redacted]nsist with the reputation of the government to [redacted] concerning them. Only reasonable things merit [redacted] or can, with propriety, have attention.

I beg, sir, that you will at no time have any scruples about commanding me. I shall always with pleasure comply with your commands. I wish my health, or the time for it, would permit me now to be more correct. The other part of your letter shall be carefully attended to in time.

FRANCE.*

1796.

There are circumstances which render it too probable that a very delicate state of things is approaching

* In 1796 the canvass for the Presidency was proceeding with great violence, and M. Adet, the French minister, was making every effort to bully our government into aiding France, and doing all in his power to help the opposition.

between the United States and France. When threatened with foreign danger, from whatever quarter, it is highly necessary that we should be united at home; and considering our partiality hitherto for France, it is necessary towards this union, that we should understand what has really been the conduct of that country toward us. It is time for plain truths, which can only be unacceptable to the hirelings or dupes of that nation.

France, in our revolution war, took part with us. At first she afforded us secret and rather scanty succor, which wore more the complexion of a disposition to nourish a temporary disturbance in the dominions of a rival power, than of an intention to second a revolution.

The capture of Burgoyne and his army decided the till then hesitating councils of France; produced the acknowledgment of our independence, and treaties of commerce and defensive alliance. These again produced the war which ensued between France and Great Britain.

The co-operation and succor of France after this period were efficient and liberal. They were extremely useful to our cause, and no doubt contributed materially to its success.

The primary motive of France for the assistance she gave us, was obviously to enfeeble a hated and powerful rival, by breaking in pieces the British Empire. A secondary motive was to extend her relations of commerce in the New World, and to

Under these circumstances Hamilton felt it to be essential to expose the real attitude and conduct of the French, and destroy so far as possible the dangerous sentiment of unreasonable affection and gratitude toward our former allies. He therefore published the essay entitled "France."

acquire additional security for her possessions there, by forming a connection with this country when detached from Great Britain. To ascribe to her any other motives—to suppose that she was actuated by friendship towards us, or by a regard for our particular advantage, is to be ignorant of the springs of action which invariably regulate the cabinets of princes. He must be a fool, who can be credulous enough to believe, that a despotic court aided a popular revolution, from regard to liberty or friendship to the principles of such a revolution. In forming the conditions upon which France lent her aid, she was too politic to attempt to take any unworthy advantage of our situation. But they are much mistaken who imagine that she did not take care to make a good bargain for herself. Without granting to us any material privilege in any of her external possessions, she secured in perpetuity a right to participate in our trade, on the foot of the most favored nation. But what is far more important, she, in return for the guaranty of our sovereignty and independence, obtained our guaranty of her West India possessions in every future *defensive* war. This may appear at first sight a mutual and equal advantage, but in its permanent operation it is not so. The guaranty of our sovereignty and independence, which is never likely to be again drawn into question, must hereafter be essentially nominal; while our guaranty of the West India possessions must grow into a solid advantage, increasing in importance as we advance in strength, and exposing us often to the chances of being engaged in wars, in which we

may have no direct interest. However this guaranty may be regarded as nominal on our part, in this very early stage of our national power, it cannot be so in time to come. We shall be able to afford it with effect, and our faith will oblige us to do so.

But whatever were the motives of France, and though the conditions of the alliance may be in their permanent tendency more beneficial to her than to us, it was our duty to be faithful to the engagements which we contracted with her, and it even became us, without scanning too rigidly those motives, to yield ourselves to the impulses of kind and cordial sentiments towards a power by which we were succored in so perilous a crisis.

Nor should we ever lightly depart from the line of conduct which these principles dictate. But they ought not to be carried so far as to occasion us to shut our eyes against the just causes of complaint which France has given or may hereafter give us. They ought not to blind us to the real nature of any instances of an unfair and unfriendly policy which we have experienced or may hereafter experience from that country. Let us cherish faith, justice, and, as far as possible, good will, but let us not be dupes.

It is certain that in the progress and towards the close of our revolution war, the views of France, in several important particulars, did not accord with our interests. She manifestly favored and intrigued to effect the sacrifice of our pretensions on the Mississippi to Spain; she looked coldly upon our claim to the privileges we enjoy in the cod fisheries; and she patronized our negotiation with Great

Britain without the previous *acknowledgment of our independence*;—a conduct which, whatever color of moderation may be attempted to be given to it, can only be rationally explained into the desire of leaving us in such a state of *half peace, half hostility with Great Britain, as would necessarily render us dependent upon France.*

Since the peace every careful observer has been convinced that the policy of the French Government has been adverse to our acquiring internally *the consistency of which we were capable*—in other words, a well-constituted and efficient government. Her agents everywhere supported, and with too little reserve, that feeble and anarchical system—the old Confederation,—which had brought us almost to the last stage of national *nothingness*, and which remained the theme of their eulogies, when every enlightened and virtuous man of this country perceived and acknowledged its radical defects and the necessity of essential alterations.

The truth of all this, of which no vigilant and unbiassed friend to his country had before the least doubt, has been fully confirmed to us by the present government of France, which has formally proclaimed to us and to the whole world the *Machiavellian* conduct of the old governments toward this country; nor can we suspect the promulgation to have been the effect of the enmity of the *new* against the *old* government, for our records and our own observations assure us that there is no misrepresentation.

This disclosure, which has not sufficiently attracted the attention of the American people, is very serious

and instructive. Surely it ought to put us upon our guard—to convince us that it is at least possible the succeeding rulers of France may have been on some occasions tinctured with a similar spirit. They ought to remember that the magnanimity and kindness of France and the former government were as much trumpeted by its partisans among us as are now the magnanimity and kindness of the present government. What say facts?

Genet was the first minister sent by the new government to this country. Are there no marks of a crooked policy in his *behavior*, or in his instructions? Did he say to us, or was he instructed to say to us, with frankness and fair-dealing: "Americans, France wishes your co-operation; she thinks you bound by your treaty—or by gratitude—or by affinity of principles, to afford it"? Not a word of all this. The language was: "France does not require your assistance; she wishes you to pursue what you think your interest."

What was the conduct? Genet came out with his pocket full of commissions to arm privateers. Arrived at Charleston, before he had an opportunity of sounding our government, he begins to issue them, and to fit privateers from our ports. Certain that this was a practice never to be tolerated by the enemies of France, and that it would infallibly implicate us in the war, our government mildly signifies to him its disapprobation of the measure. He affects to acquiesce, but still goes on in the same way—very soon in open defiance of the government; between which and our own citizens he presently endeavors to

introduce jealousy and schism. He sets on foot intrigues with our southern and western extremes, and attempts to organize our territory, and to carry on from it military expeditions against the territories of Spain in our neighborhood—a nation with which we were at peace.

It is impossible to doubt that the end of all this was to drag us into the war, with the humiliation of being plunged into it without ever being consulted, and without any volition of our own.

No government or people could have been more horridly treated than we were by this foreign agent. Our Executive, nevertheless, from the strong desire of maintaining good understanding with France, forbore to impute to the French Government the conduct of its agent; made the matter personal with him, and requested his recall. The French Government could not refuse our request without a rupture with us, which at that time would have been extremely inconvenient for many plain reasons. The application for the recall accordingly had full success; and the more readily as it arrived shortly after the overthrow of the Girondist party (to which *Genet* belonged), and thus afforded another opportunity of exercising vengeance on that devoted party.

But it were to be very credulous to be persuaded that *Genet* acted in this extraordinary manner, from the very beginning, without the authority of the government by which he was sent; and did not the nature of his conduct contain an internal evidence of the source, it could be easily traced in the instructions which he published. These instructions demonstrate

three things, though the last is couched in very covert terms: 1. That France did not consider us as bound to aid her in the war. 2. That she desired to engage us in it, and the principal bribe was to be large privileges in her West India trade. 3. That if direct negotiation did not succeed, indirect means were to be taken to entangle us in it whether so disposed or not. It is not matter of complaint, that France should endeavor to engage by fair means our assistance in the war, if she thought it would be useful to her, but it is just matter of bitter complaint, that she should attempt against our will to ensnare or drive us into it.

Fauchet succeeded Genet. It was a *meteor* following a *comet.* No very marked *phenomena* distinguish his course. But the little twinkling appearances which here and there are discernible, indicate the same general policy in him which governed his predecessor. The Executive of our country, in consequence of an insurrection, to which one of them had materially contributed, had publicly arraigned political clubs. *Fauchet,* in opposition, openly patronizes them. At the festivals of these clubs he is always a guest, swallowing toasts full of sedition and hostility to the government. Without examining what is the real tendency of these clubs, without examining even the policy of what is called the President's denunciation of them, it was enough for a foreign minister that the Chief Magistrate of our country had declared them to be occasions of calamity to it. It was neither friendly nor decent in a foreign minister after this to countenance these institutions. This conduct

discovered towards us not only unkindness but contempt. There is the more point in it, as this countenance continued after similar societies had been proscribed in France;—what were destructive poisons there, were in this country salutary medicines. But the hostility of the views of this minister is palpable in that intercepted letter of his, which unveils the treachery of Randolph. We there learn, that he pretended to think it was a duty of patriotism to second the Western insurrection; that he knew and approved of a conspiracy which was destined to overthrow the administration of our government, even by the most irregular means.

Another revolution of party in *France* placed *Mr. Adet* in the room of *Mr. Fauchet. Mr. Adet* has been more circumspect than either of his predecessors; and perhaps we ought scarcely to impute it to him as matter of reproach, that he openly seconded the opposition in Congress to the treaty concluded with *Great Britain.* This was a measure of a nature to call forth the manœuvres of diplomatic tactics. But if we are wise, we shall endeavor to estimate rightly the probable motives of whatever displeasure France or her agents may have shown at this measure. Can it be any thing else than a part of the same plan which induced the minister of *Louis XVI.* to advise us to treat with Great Britain without the previous acknowledgment of our independence? Can it be any thing else than a part of that policy which deems it useful to France, that there should perpetually exist between us and Great Britain germs of discord and quarrel? Is it not manifest that in the eyes of

France the unpardonable sin of that treaty is, that it roots up for the present those germs of discord and quarrel? To pretend that the treaty interferes with our engagements with France, is a ridiculous absurdity—for it expressly excepts them. To say that it establishes a course of things hurtful to France in her present struggle, is belied by the very course of things since the treaty—all goes on exactly as it did before.

Those who can justify displeasure in France on this account, are not *Americans*, but *Frenchmen*. They are not fit for being members of an independent nation, but are prepared for the dependent state of colonists. If our government could not without the permission of France terminate its controversies with another foreign power, and settle with it a treaty of commerce, to endure three or four years, our boasted independence is a name. We have only transferred our allegiance! we are slaves!

THE ANSWER.*

(From the *Minerva*.)

December 6, 1796.

The French Republic have, at various times during the present war, complained of certain principles and decisions of the American Government, as being violations of its neutrality, or infractions of the treaty made with France in the year 1778. These com-

* From Adet's offensive note announcing the decree of the French Government against neutrals, a sharp correspondence had sprung up with Pickering, our Secretary of State. Just after Congress assembled Hamilton replied to Adet in "The Answer," under his old signature of "Americanus."

plaints were principally made in the year 1793, and explanations, which till now were deemed satisfactory, were made by Mr. Jefferson's correspondence, in August of that year. They are now not only renewed with great exaggeration, but the French Government have directed that it should be done *in the tone of reproach, instead of the language of friendship.* The apparent intention of this menacing tone, at this particular time, is to influence timid minds to vote agreeably to their wishes in the election of President and Vice-President, and probably with this view the memorial was published in the newspapers. This is certainly a practice that must not be permitted. If one foreign minister is permitted to publish what he pleases to the people, in the name of his government, every other foreign minister must be indulged with the same right. What then will be our situation on the election of a President and Vice-President, when the government is insulted, the persons who administer it traduced, and the election menaced by public addresses from these intriguing agents? Poland, that was once a respectable and powerful nation, but is now a nation no longer, is a melancholy example of the dangers of foreign influence in the election of a chief magistrate. Eleven millions of people have lost their independence from that cause alone. What would have been the conduct of the French Directory, if the American minister had published an elaborate and inflammatory address to the people of France against the government, reprobating the conduct of those in power, and extolling that of the party opposed to them? They would have done as the

Parliament of England did in 1727, when the emperor's Resident presented an insolent memorial to the king, and published it next day in the newspapers. All parties concurred in expressing the highest indignation and resentment at the affront offered to the government by the memorial delivered by Monsieur Palm, and more particularly at his audacious manner of appealing from the government to the people, under the pretext of applying for reparation and redress of supposed injuries. In consequence of an address from both houses, Monsieur Palm was ordered to quit England immediately. And is it not necessary that we should adopt some remedy adequate to this evil to avoid those serious consequences which may otherwise be apprehended from it?

The conduct of the American Government to preserve its neutrality has been repeatedly justified by arguments drawn from the law of nations, and in the application of its principles they have gone as far, in every instance, and in one particular instance farther, in favor of France, than the strict rule of neutrality would justify. It would, therefore, answer no valuable purpose to state the same principles, and deduce the same consequences, in order to justify ourselves on the same ground, that we have already done; but as the *reproaches* of the French Republic are founded on an idea that our construction and application of the law of nations is erroneous, partial, and inimical, it may be worth while to examine whether we cannot justify ourselves by the example of the French nation itself. I presume a better rule of justification against

any charge cannot be required, than the conduct of those who have made it in like cases.

I propose, therefore, to compare the decisions of the American Government, in the several points wherein they have been complained of in Mr. Adet's memorial, with the laws of France on the same points.

It is asserted that the American Government has violated the 17th article of the treaty of 1778, by arresting French privateers and their prizes; and that it has exercised *shocking persecutions* toward them.

It will be found, on an accurate inquiry, that all the prizes brought in under French commissions, that have been restored, have been found to be in one or the other of the following descriptions:

1. Those captured within a marine league of the shores of the United States.

2. When the capturing vessel was owned and principally manned by American citizens.

3. When the capturing vessel was armed in our ports.

As to the jurisdiction exercised by the United States over the sea contiguous to its shores, all nations claim and exercise such a jurisdiction, and all writers admit this claim to be well founded: and they have differed in opinion only as to the distance to which it may extend. Let us see whether France has claimed a greater or less extent of dominion over the sea than the United States. Valin, the king's advocate at Rochelle, in his new commentary on the marine laws of France, published first in 1761, and

again by approbation in 1776,* after mentioning the opinions of many different writers on public law on this subject, says: "As far as the distance of two leagues the sea is the dominion of the sovereign of the neighboring coast; and that whether there be soundings there or not. It is proper to observe this method in favor of states whose coasts are so high that there are no soundings close to the shore, but this does not prevent the extension of the dominion of the sea, *as well as in respect to jurisdiction as to fisheries*, to a greater distance by particular treaties, or the rule herein before mentioned, which extends dominion as far as there are soundings, or as far as the reach of a cannon shot; *which is the rule at present universally acknowledged.*" "The effect of this dominion," the same author says, "according to the principles of Puffendorf, which are incontestable, is, that every sovereign has a right to protect foreign commerce in his dominions, as well as to secure it from insult, by preventing others from approaching nearer than a certain distance." In extending our dominion over the sea to one league, we have not extended it so far as the example of France and the other powers of Europe would have justified. They, therefore, can have no right to complain of our conduct in this respect.

The second description of cases which has induced the American Government to restore prizes claimed by the French, is when our citizens have made the capture under a French commission.

The third article of the ordinances of the marine of France, which the commission now given to French

* Book 5, Title 1.

privateers requires to be observed (Valin, vol. 2, 235), is as follows: "We prohibit all our subjects from taking commissions from foreign kings, princes, or states, to arm vessels for war, and to cruise at sea under their colors, unless by our permission, on pain of being treated as pirates." The commentator says these general and indefinite prohibitions have no exception. They extend to commissions taken from friends or allies, as well as neutrals, and those that are equivocal, and they were considered as necessary consequences of the laws of neutrality.

"If," says Valin, "the commission of the foreign prince be to cruise against *his enemies* who are *our allies, or those with whom we intend to preserve neutrality*, it would afford just ground of complaint on their part, and might lead to a rupture." The rule extends as well to subjects domiciliated as not domiciliated in the kingdom, and foreign countries; "for Frenchmen are not the less Frenchmen, for having gone to live in foreign countries." If France may rightfully probibit her citizens from accepting foreign commissions to make prize of the property of her friends, why should the United States be *reproached* for exercising a similar right? A necessary consequence of this wise and just prohibition is, that all prizes taken contrary to it should be restored with damages to the party injured.

The third description of prizes restored, is where they have been fitted and armed in the ports of the United States.

I find no direct, positive provision by the marine laws of France, prohibiting this; but the whole tenor

of those laws suppose that vessels of war are armed in the ports of the sovereign who gives the commission. French privateers must not only fit out in a French port, but are bound to bring all prizes made by them into some particular port or ports expressed in their commissions (Valin, vol. 2, 276). And it is certain that the king of France, previous to his alliance with the United States, delivered up some American prizes to the English, because the capturing vessel had been armed in a French port.

Mr. Adet's memorial charges that the English have been permitted to arm their vessels and bring their prizes into our ports. As to this charge, the fact is simply denied. In the cases mentioned, the vessels said to have taken in guns for their defence, were gone before he made his representation; yet he complained, and the government did nothing. I ask what could they have done? Mr. Adet will answer: They might have declared war against Great Britain; and it is certain this was the only remedy that remained in such a case; but neither our interest nor our duty would have permitted us to have adopted it. Our interest did not permit us to give up our neutrality and engage in a foreign war, the event of which would have produced many and certain evils, and could not by any possibility have produced any good; and it was contrary to every principle by which a just nation would desire to act, to have made war on a whole people because one or two of them had clandestinely taken arms on board for their defence, in one of our ports, without the knowledge of their government or of ours.

The memorial complains that we have infringed the 17th article of the treaty of 1778, by restraining the prohibition therein contained only to the ships of war and privateers of their enemies, who should come into our ports *with their prizes.*

The literal sense of the 17th article is, that no armed ship, *who shall have made* prizes from the French people, shall receive an asylum in our ports. The 22d article says that no privateer, fitted under a commission of the enemy of either, shall have asylum in the ports of the others. Neither of these articles says any thing of prizes. The literal application of them therefore would exclude the capturing vessels, but give admission to their prizes; which would never have been the intention of the parties. The law of nations, expressly adopted by France, relative to the right of asylum, may illustrate these articles of the treaty. Ord. Louis XIV., Art XIV., declares "that no prizes made by captains under a foreign commission shall remain in our ports longer than twenty-four hours, unless detained by bad weather, or unless the prize have been made from our enemies." But this article, says Valin, is only applicable to prizes carried into a neutral port, "and not at all to armed vessels, whether neutral or allies, who have taken refuge there, *without prizes*, either to escape the pursuit of enemies, or for any other cause. They may in this case remain as long as they please." By the law of neutrality, simply, French prizes could only have remained twenty-four hours in our ports, but by the treaty they have obtained the privilege of remaining as long as they please. This privilege has

not only been allowed them in its fullest extent, but we had gone a step further, and as a favor permitted them to sell their prizes, which neither the treaty nor the law of nations required; and which was of more importance than all the rest put together. This favor, as favors generally are, is now claimed as a right, and the withholding is considered as an injury. Let us see what the ordinances of the French marine have said on this point. Ord. Louis XIV., Tit. Prizes, Art. XIV.: "If in the prizes brought into our ports by vessels armed under a foreign commission, there be any merchandises belonging to our subjects, *or allies*, those belonging to our subjects shall be restored, *and the rest shall not be put into any storehouses, or be purchased by any person under any pretext whatsoever.*" "And all this," says Valin, "is founded on the law of neutrality." By the Treaty of Utrecht, Louis XIV., and his grandson the king of Spain, agreed mutually to permit the prizes made by one to be brought in *and sold* in the ports of the other. But this, the same author says, was only a particular arrangement, so much the less to be proposed for a general rule, as the two nations had given up the duties on the prize goods sold in their dominions, which however did not last long, on account of the abuses to which it gave rise. Abuses similar, I presume, to those to which the same permission gave rise in this country. The next ground of complaint is the British treaty and its consequences. This treaty is said to deprive France of all the advantages stipulated in a preceding treaty, and this is done by an abandonment of the modern law of nations.

If we may credit the declaration of the king of France, there were no exclusive advantages stipulated for France in that treaty. His ambassador delivered a paper to the British court, dated the 13th of March, 1778, wherein, after announcing the treaty between France and the United States, he says: "His Majesty declares at the same time, that the contracting parties have paid great attention *not to stipulate any exclusive advantages in favor of the French nation; and that the United States have reserved the liberty of treating with every other nation whatever, upon the same footing of equality and reciprocity.*"

The injury supposed to have resulted from an abandonment of the modern public law, assumes two propositions, neither of which is true: 1st. That neutral ships make neutral property. 2d. That materials for building ships are not among the articles considered as contraband of war. By the marine laws of France, Reg. Dec. 1744, Art. 5, it is directed, that "if there are found on board of neutral vessels, of whatever nation they may be, merchandises or effects belonging to the enemies of his Majesty, they shall be good prize, even though they are not of the growth or manufacture of the enemy's country, but the vessels shall be released." Previous to this regulation, and contrary to the law of nations, as Valin acknowledges, if either the ship or the cargo, or any part of it, was enemy's property, the whole was confiscated by the laws of France. And at this day neutral property on board of an enemy's ships is, by the same laws, liable to confiscation.

As to the contraband of war, timber is enumerated

among the articles that are so, by Vatel, Lib., iii., chap. vii.; but Valin is much more particular, vol. 2, 264: "In the treaty of commerce concluded with the king of Denmark, the 23d of August, 1724, pitch and tar were declared contraband, *as also rosin, sail-cloth, hemp, cordage, mats and timber, for the building of ships.* There would have been, therefore, no reason to complain of the conduct of the English, if they had not violated particular treaties; *for of right (de droit) these things are contraband at present, and have been so since the beginning of this century, which was not the case formerly.*" By the modern law of nations, expressly adopted by France, enemies' property, on board neutral ships, is good prize; and by the same law, the number of contraband articles has been increased so as to include the materials for ship-building. All the situations were probably foreseen, in which the treaty might operate favorably or unfavorably for France at the time it was made. It might have been stipulated that materials for ship-building should be deemed contraband, instead of declaring that they should not; or, that the United States should not enter into any treaty in which they should be made so. Neither of these being the case, there is no ground of complaint, except *that the consequence is inconvenient*, at present, to France, and the belligerent powers allied to her. If timber and naval stores are contraband by the law of nations, to declare them to be so by a treaty cannot be considered as a privilege granted to one nation, or an injury to any other. The French nation will not persist in asserting, that because the exercise of rights which she has

claimed as legitimate on former occasions, becomes inconvenient when exercised by others, she may therefore refuse to acknowledge and respect them. This would be the language of a haughty despot in a conquered country, not of justice, honor, and good faith from one friend to another.

It is said that the 18th article of the treaty with Great Britain suspends all the commercial relations between the United States and France, by preventing the supplies looked for by France from this country.

This article has not introduced any new case, in which provisions may be contraband. It only alters the consequence resulting from a seizure of them, when they are so. Valin (vol. 2, 264) says: "By our law and the law of nations, provisions are not prohibited, *except to places besieged or blockaded.*" The article complained of says explicitly, that when provisions and other articles *not generally contraband* are become so, *according to the existing law of nations*, and shall, *for that reason*, be seized, they shall not be confiscated, but the owner shall be completely indemnified, and receive besides a reasonable mercantile profit. This principle operated as an encouragement for American vessels to seek the French markets, by insuring them against loss, if they happened in any instance to be interrupted in the voyage. France, I presume, might consider our vessels bound with provisions to a place besieged or blockaded liable to seizure, after due notice of the fact. If, instead of this, they contend for the privilege of paying for them according to the terms of the treaty with Great Britain, I suppose it will not be denied to them.

But if, under pretence that a vessel is bound to a besieged or blockaded port, when she is not, either France or Great Britain should seize or detain her, it is an injury not authorized by the treaty or the law of nations. This is what both nations have done, when their interests or necessities required it—sometimes with, and often without any apology; and what they will often continue to do, I fear, as long as they know we cannot punish them for it.

These injuries are said to have been received, while every other object around reminds us of the tyranny of Britain and the generous assistance of France, during the American war.

The generosity of France and the magnitude of the United States have been often suggested by some of our own citizens, and we are now *reproached* with it by France herself. Gratitude is due for favors received; and this virtue may exist among nations as well as among individuals; but the motive of the benefit must be solely the advantage of the party on whom it was conferred, else it ceases to be a favor. There is positive proof that France did not enter into the alliance with us in 1778 *for our advantage*, but for her own. The whole course of the investigation, as well as a positive knowledge of the fact, proves this. She resisted all of our solicitations for effectual assistance for war three years; and rose in her demand during the campaign of 1777, when our affairs presented the most threatening aspect. Memorials were presented in August and September of that year, while General Burgoyne's army arrived in December; fearing we might be able to do the

business without them, the French court began to change its tone. In January the British minister gave notice in the House of Commons that he meant to propose terms of accommodation with America. The French ministry, on the arrival of this intelligence in France, immediately pressed the conclusion of the treaty which they had resisted for three years, and proposed terms much more favorable for us than those our commissioner had offered, and they had refused three months before. The treaty was signed on the 8th of February. I perceive no generosity in all this. They did then as we have done now, and as every discerning nation will do—they regarded only their own interest and advantage, and not that of any other nation. In the interval between the declaration of independence and the alliance with France, that court sometimes ordered away our privateers, and sometimes restored their prizes. They refused to receive an ambassador or acknowledge our independence; all of which was for fear of bringing France prematurely into the war. The fact is, that the French spoke of very different terms, as the condition of their assistance, before the capture of Burgoyne, from those actually agreed on afterwards. There can be no doubt that our success on that occasion, and the disposition it appeared to have produced in the British ministry, were the immediate causes of that alliance. It was certainly the interest of the French to unite with America in the war against Great Britain. They therefore acted right in doing this at last, though with too much refinement in putting it off so long, but it is not the interest of the United

States to be engaged in any war whatsoever—much less do they desire to imbrue their hands in the blood of one nation to gratify the hatred or serve the interest of another. We have acted right hitherto in laying it down as a principle, not to suffer ourselves to be drawn into the wars of Europe; and if we must have a war, I hope it will be for refusing to depart from that principle.

Our government has acted with firmness, consistency, and moderation, in repelling the unjust pretensions of the belligerent powers, as far as reason and argument could have weight. If it has not attempted in every instance to preserve our rights by force wherein the remedy would have been worse than the disease, they have not yielded them by concession, in any instance. Into whatsoever hands the administration of the government may now come, they are called on by the suggestions of a wise policy, and the voice of their country, to pursue the same general line of conduct that has been hitherto pursued, without yielding to the violence of party on either side. They will then be sure of the approbation and support of the most virtuous, which it is to be hoped are the most numerous of all parties. On the contrary, if, departing from these principles, they unnecessarily involve their country in the horrors of war, they will meet the merited execration of good men, and in the end the punishment justly due to such conduct from an injured people.

AMERICANUS.

THE WARNING.*

I.

January 27, 1797.

There are appearances too strong not to excite apprehension that the affairs of this country are drawing fast to an eventful crisis. Various circumstances, daily unfolding themselves, authorize a conclusion that France has adopted a system of conduct toward the neutral maritime nations generally, which amounts to little less than actual hostility. I mean the total interruption of their trade with the ports of her enemies; a pretension so violent, and at the same time so oppressive, humiliating, and ruinous to them, that they cannot submit to it, without not only the complete sacrifice of their commerce, but their absolute degradation from the rank of sovereign and independent states.

It seems to have become latterly a primary object in the policy of France to make the principal attack upon Great Britain through her commerce, in order, by extinguishing the sources of her revenue and credit, to disable her from continuing the war, and compel her to accept any conditions of peace which her antagonist may think fit to prescribe. It is to this plan we are to attribute the unjustifiable treatment of Tuscany, in the seizure of Leghorn, and shutting her ports against the English, contrary to the will of her own government. The same plan has

* "The Warning" was in continuation of the line of argument pursued in "France." Its purpose was to arouse the people against French influence, and to show that we ought to be independent of all foreigners, and not allow ourselves to be dragged by France into a war with England, but rather be prepared to withstand the more dangerous encroachments of the "Great Republic itself."

dictated the attempts which are understood to have been made to oblige Naples to exclude Great Britain from her ports during the present war. And there have been indications of a design to effect a similar restraint on all the Italian states, and expel the British trade wholly from the Mediterranean. The same object of wounding Great Britain through her commerce, has been promoted by the war into which Spain has been drawn, and may be considered as the principal advantage expected from it; while it is likewise alleged to be the intention to force Portugal to suspend her commercial relations with Great Britain. The late decree forbidding the importation of British manufactures into France, is a further proof of the eagerness with which the policy of destroying the British commerce is pursued; since it is presumable, from the derangement of French manufactures by the war, that there must have been a convenience in the supply which that importation has afforded.

It is obviously to the same origin that we are to trace the decree lately communicated by the French minister to our government, with respect to the intended treatment of the trade of neutrals, and the spoliations which ours has for a long time past suffered. While neutral nations were permitted to enjoy securely their rights, besides the direct commerce between them and the British dominions, the commerce of Great Britain would be carried on in neutral bottoms, even with the countries where it was denied access in British bottoms. It follows, that the abridgment of neutral rights is essential to the scheme of destroying the British commerce. And here we

find the true solution of those unfriendly proceedings, on the part of France toward this country, which are hypocritically charged to the account of the treaty with Great Britain, and other acts of pretended infidelity in our government.

Did we need a confirmation of this truth, we should find it in the intelligence lately received from Cadiz. We are informed, through a respectable channel,* that *Danish* and *Swedish*, as well as *American* vessels, carried into that port by French cruisers, have, with their cargoes, been condemned and confiscated by the French consul or tribunal there, on the declared principle of intercepting the trade of neutrals with the ports of the enemies of France. This indiscriminate spoliation of the commerce of neutral powers is a clear proof that France is actuated, not by particular causes of discontent given by our government, but by a general plan of policy.

The practice upon the decree is a comment much broader than the text. The decree purports that France would observe toward neutrals the same conduct which they permitted her enemies to observe toward them. But the practice goes a great deal further. None of the enemies of France, even at the height of their power and presumption, ever pretended totally to cut off the trade of neutrals with her ports. This is a pretension reserved for her, to increase the catalogue of extraordinary examples, of which her revolution has been so fruitful.

The allegations of discontent with this country are

* Mr. Ignardi, our consul at Cadiz, lately arrived, who mentioned the fact as here stated, adding, without reserve, that the principle above mentioned is avowed in the correspondence of the French consul at Cadiz.

evidently a mere coloring to the intended violation of its rights, by treaty as well as by the laws of nations. Some pretext was necessary, and this has been seized. It will probably appear hereafter that *Denmark* and *Sweden* have been mocked with a similar tale of grievances. It is, indeed, already understood that Sweden, outraged in the person of her representative, has been obliged to go the length of withdrawing her minister from Paris.

The complaints of France may be regarded principally as weapons furnished to her adherents to defend her cause, notwithstanding the blows she inflicts. Her aim has been, in every instance, to seduce the people from their government, and, by dividing, to conquer and oppress. Hitherto, happily, the potent spells of this political sorcery have, in most countries, been counteracted and dissipated by the sacred flame of patriotism. One melancholy exception serves as a warning to the rest of mankind to shun the fatal snare. It is, nevertheless, humiliating, that there are men among us depraved enough to make use of the arms she has furnished in her service, and to vindicate her aggressions as the effect of a just resentment, provoked by the ill conduct of our government. But the artifice will not succeed. The eyes of the people of this country are, every day, more and more opened to the true character of the politics of France; and the period is fast approaching when it will be seen in all its intrinsic deformity.

The desire of a power at war to destroy the commerce of its enemy, is a natural effect of the state of war, and while exercised within bounds, consistent

with the rights of nations who are not engaged in the contest, is entirely justifiable; but when it manifestly overleaps these bounds, and indulges in palpable violations of neutral rights, without even the color of justification in the usages of war, it becomes an intolerable tyranny, wounds the sovereignty of nations, and calls them to resistance by every motive of self-preservation and self-respect.

The conduct of France, from the commencement of her successes, has, by gradual developments, betrayed a spirit of universal domination; an opinion that she had a right to be the legislatrix of nations; that they are all bound to submit to her mandates, to take from her their moral, political, and religious creeds; that her plastic and regenerating hand is to mould them into whatever shape she thinks fit; and that her interest is to be the sole measure of the rights of the rest of the world. The specious pretence of enlightening mankind, and reforming their civil institutions, is the varnish to the real design of subjugating them. The vast projects of a Louis XIV. dwindle into insignificance compared with the more gigantic schemes of his republican successors.

Men, well informed and unprejudiced, early discovered the symptoms of this spirit. Reasoning from human nature, they foresaw its growth with success; that from the love of dominion, inherent in the heart of man, the rulers of the most powerful nation in the world, whether a Committee of Safety or a Directory, will forever aim at an undue empire over other nations; and that this disposition, inflamed as it was by enthusiasm, if encouraged by a continuation of suc-

cess, would be apt to exhibit itself, during the course of the French Revolution, in excesses of which there has been no example since the days of Roman greatness.

Every day confirms the justice of that anticipation. It is now indispensable that the disagreeable and menacing truth should be exposed in full day to the people of America; that they should contemplate it seriously, and prepare their minds for extremities, which nothing short of abject submission may be able to avert. This will serve them as an armor against the machinations of traitorous men, who may wish to make them instruments of the ambition of a foreign power, to persuade them to concur in forging chains for mankind, and to accept, as their award, the despicable privilege of wearing them a day later than others.

Already in certain circles is heard the debasing doctrine that France is determined to reduce us to the alternative of war with her enemies, or war with herself, and that it is our interest and safety to elect the former.

There was a time when it was believed that a similar alternative would be imposed by Great Britain. At this crisis there was but one sentiment. The firmest friends of moderation and peace, no less than the noisiest partisans of violence and war, resolved to elect war with that power which should drive us to the election. This resolution was the dictate of morality and honor, of a just regard to national dignity and independence. If any consideration, in any situation, should degrade us into a different resolution,

we, that instant, shake hands with crime and infamy: we descend from the high ground of an independent people, and stoop to the ignominious level of vassals. I trust there are few Americans who would not cheerfully encounter the worst evils of a contest with any nation on earth rather than subscribe to so shameful an abdication of their rank as men and citizens.

AMERICUS.

II.

February 7, 1797.

Independent of the commands of honor the coolest calculations of interest forbid our becoming the instruments of the ambition of France, by associating with her in the war. The question is no longer the establishment of liberty on the basis of republican government. This point the enemies of France have ceased to dispute. The question now is whether she shall be aggrandized by new acquisitions, and her enemies reduced by dismemberments, to a degree which may render her the mistress of Europe, and consequently, in a great measure, of America. This is truly the remaining subject of contention.

They who understood the real strength and resources of France before the present war, knew that she was intrinsically the most powerful nation of Europe. The incidents of the war have displayed this fact in a manner which is the astonishment of the world. If France can finally realize her present plan of aggrandizement, she will attain to a degree of greatness and power which, if not counteracted by internal disorder, will tend to make her the terror and

the scourge of nations. The spirit of moderation in a state of overbearing power is a phenomenon which has not yet appeared, and which no wise man will expect ever to see. It is certain that a very different spirit has hitherto marked the career of the new republic; and it is due to truth to add, that the ardent, impetuous, and military genius of the French affords perhaps less prospect of such a spirit in them than in any other people.

'T were therefore contrary to our true interest to assist in building up this colossus to the enormous size at which she aims. 'T were a policy as short-sighted as mean to seek safety in a subserviency to her views as the price of her clemency. This at best would be but a temporary respite from the rod; if indeed that can be called a respite, which is of itself the sacrifice of a real to a nominal independence.

These reflections are not designed to rouse a spirit of hostility against France, or to inculcate the idea that we ought of choice to participate in the war against her. They are intended merely to fortify the motives of honor, which forbid our stooping to be *compelled*, either to submit without resistance to a virtual war on her part, or to avert her blows by engaging in the war on her side.

When it was the opinion, that France was defending the cause of liberty, it was a decisive argument against embarking with her in the contest, that it would expose us to hazards and evils infinitely disproportioned to the assistance we could render. Now that question plainly is, whether France shall give the law to mankind. The addition of our opposition to

her plan could have too little influence upon the event to justify our willingly encountering the certain dangers and mischiefs of the enterprise. 'T is our true policy to remain at peace if we can, to negotiate our subjects of complaint as long as they shall be at all negotiable, to defer and to wait.

When the indiscriminate seizure of our vessels by British cruisers, under the order of the sixth of November, 1793, had brought our affairs with Great Britain to a crisis, which led to the measure of sending a special envoy to that country to obtain relief and reparation, it was well understood that the issue of that mission was to determine the question of peace or war between the two nations. In like manner, it is to be expected that our Executive will make a solemn and final appeal to the justice and interest of France, will insist in mild but explicit terms on the renunciation of the pretension to intercept the lawful commerce of neutrals with the enemies of France, and the institution of some equitable mode of ascertaining and retributing the losses which the exercise of it has inflicted upon our merchants. If the experiment shall fail, there will be nothing left but to repel aggression and defend our commerce and independence. The resolution to do this will then be imposed on the government by a painful but irresistible necessity, and it were an outrage to the American name and character to doubt that the people of the United States will approve the resolution, and will support it with a constancy worthy of the justice of their cause, and of the glory they have heretofore deserved and acquired.

No ! let this never be doubted ! the servile minions of France—those who have no sensibility to injury but when it comes from Great Britain, who are unconscious of any rights to be protected against France; who, at a moment when the public safety more than ever demands a strict union between the people and their government, traitorously labor to detach them from it, and to turn against the government, for pretended faults, the resentment which the real oppressions of France ought to inspire ;—these wretched men will discover in the end, that they are as insignificant as they are unprincipled. They will find that they have vainly flattered themselves with the co-operation of the great body of those men with whom the spirit of party has hitherto associated them. In such an extremity the adventitious discriminations of party will be lost in the patriotism and pride of the American character. Good citizens of every political denomination will remember that they are Americans; that when their country is in danger, the merit or demerit of particular measures is no longer a question; that it is the duty of all to unite their efforts to guard the national rights, to avert national humiliation, and to withstand the imposition of a foreign yoke. The true and genuine spirit of 1776, not the vile counterfeits of it which so often disgust our eyes and our ears, will warm every truly American heart, and light up in it a noble emulation to maintain inviolate the rights and unsullied the honor of the American nation. It will be proved, to the confusion of all false patriots, that we did not break the fetters of one foreign tyranny to put on those of another. It will

be again proved to the world that we understand our rights, and have the courage to defend them.

But there is still ground to hope that we shall not be driven to this disagreeable extremity. The more deliberate calculations of France will probably rescue us from the present embarrassment. If she perseveres in her plan, she must inevitably add all the neutral powers to the number of her enemies. How will this fulfil the purpose of destroying the commerce of Great Britain? The commerce of those powers with France will then entirely cease, and be turned more extensively into the channels of Great Britain, protected by her navy, with the co-operation of the maritime force of those powers. The result will be the reverse of what is projected by the measure. The commerce and revenue of Britain will, in all likelihood, be augmented rather than diminished; and her arms will receive an important reinforcement. Violent and unjust measures commonly defeat their own purpose. The plan of starving France was of this description, and operated against the views of its projectors. This plan now adopted by France, of cutting off the trade of neutrals with her enemies, alike violent and unjust, will no doubt end in similar disappointment. Let us hope that it will be abandoned, and that ultimate rupture will be avoided; but let us also contemplate the possibility of the contrary, and prepare our minds seriously for the unwelcome event.

AMERICUS.

III.

February 21, 1797.

The Paris accounts inform us, that France has lately exercised toward Genoa an act of atrocious oppression, which is an additional and a striking indication of the domineering and predatory spirit by which she is governed. This little republic, whose territory scarcely extends beyond the walls of her metropolis, has been compelled, it seems, to ransom herself from the talons of France by a contribution of nearly a million of dollars, a large sum for her contracted resources. For this boon, "the French Government engages on its part to *renounce all claims upon Genoa*, to forget what has passed during the present war, and to forbear any future demands." It would appear from this, that France, to color the odious exaction, besides the pretence of misconduct toward her in the present war, has not disdained to resort to the stale and pitiful device of reviving some antiquated claim upon the country itself. In vain did the signal hazards encountered by Genoa to preserve her neutrality, in defiance of the host of enemies originally leagued against France,—in vain did the character and title of republic plead for a more generous treatment. The attractions of plunder predominated. The spirit of rapine, callous to the touch of justice, blind to the evidence of truth, deaf to the voice of entreaty, had marked out, and devoted the mark. There was no alternative but to compound or perish.

If it be even supposed, though this has never appeared, that at some period of the war Genoa may be chargeable with acts of questionable propriety in

relation to France, it is manifest, that it ought to be attributed to the necessity of a situation which must have obliged her to temporize. A very small and feeble state, in the midst of so many great conflicting powers, parts of her territories occupied by armies which she was unable to oppose, it were a miracle, indeed, if her conduct in every particular will bear the test of rigorous scrutiny. But if at any time the pressure of circumstances may have occasioned some slight deviation, there is, nevertheless, full evidence of a constant solicitude on the part of Genoa to maintain, to the utmost of her ability, a sincere neutrality. It is impossible to forget the glorious stand which she at one time made against the imperious efforts of Great Britain to force her from her neutral position. The magnanimous and exemplary fortitude which she displayed on that occasion excited in this country universal admiration, and must have made a deep impression. 'T is only to recollect that instance to be satisfied that the treatment which she has just experienced from France merits the indignant execration of mankind. Unfortunate Genoa! how little didst thou imagine that thou wert destined so soon to be compelled to purchase thy safety from the crushing weight of that hand which ought to have been the first to rise in thy defence!

How fruitful at the same time of instruction to us is this painful example! The most infatuated partisans of France cannot but see in it an unequivocal proof of the rapacious and vindictive policy which dictates her measures. All men must see in it, that the flagrant injuries which we are now suffering from

her, proceed from a general plan of domination and plunder; from a disposition to prostrate nations at her feet; to trample upon their necks; to ravish from them whatever her avidity or convenience may think fit to dedicate to her own use.

The last intelligence from France seems to dispel the doubt whether the depredations in the West Indies may not have resulted from misapprehension or abuse of the orders of the French Government. It is now understood to be a fact that the cruisers of France everywhere are authorized to capture and bring in all vessels bound to the ports of her enemies.

This plan is pregnant with the worst evils, which are to be dreaded from the declared and unqualified hostility of any foreign power. If France, after being properly called upon to renounce it, shall persevere in the measure, there cannot be a question but that open war will be preferable to such a state. By whatever name treachery or pusillanimity may attempt to disguise it, 't is in fact war of the worst kind, *war on one side.* If we can be induced to submit to it longer than is necessary to ascertain that it cannot be averted by negotiation, we are undone as a people. Whether our determination shall be to coop up our trade by embargoes, or to permit our commerce to continue to float an unprotected prey to French cruisers, our degradation and ruin will be equally complete. The destruction of our navigation and commerce, the annihilation of our mercantile capital, the dispersion and loss of our seamen—obliged to emigrate for subsistence,—the extinction of our revenue, the fall of public credit, the stagnation of every species of

industry, the general impoverishment of our citizens, —these will be minor evils in the dreadful catalogue. Some years of security and exertion might repair them. But the humiliation of the American mind would be a lasting and a mortal disease in our social habit. Mental debasement is the greatest misfortune that can befall a people. The most pernicious of conquests which a state can experience is a conquest over that just and elevated sense of its own rights which inspires a due sensibility to insult and injury; over that virtuous and generous pride of character, which prefers any peril or sacrifice to a final submission to oppression, and which regards national ignominy as the greatest of national calamities.

The records of history contain numerous proofs of this truth. But an appeal to them is unnecessary. Holland and Italy present to our immediate observation, examples as decisive as they are deplorable. The former within the last ten years has undergone two revolutions by the intervention of foreign powers, without even a serious struggle. Mutilated of precious portions of its territory at home by pretended benefactors but real despoilers, its dominions abroad slide into the possession of its enemies rather as derelicts than as the acquisitions of victory. Its fleets surrender without a blow. Important only by the spoils which it offers no less to its friends than to its enemies, every symptom in its affairs is portentous of national annihilation. With regard to Italy, 't is sufficient to say that she is debased enough, not even to dare to take part in a contest, on which, at this moment, her destiny is suspended.

Moderation in every nation is a virtue. In weak or young nations, it is often wise to take every chance by patience and address to divert hostility, and in this view to *hold parley* with insult and injury; but to *capitulate* with oppression, or rather to surrender to it at discretion, is, in any nation that has any power of resistance, at all times as foolish as it is contemptible. The honor of a nation is its life. Deliberately to abandon it, is to commit an act of political suicide. There is treason in the sentiment, avowed in the language of some, and betrayed by the conduct of others, that we ought to bear any thing from France, rather than go to war with her. The nation, which can prefer disgrace to danger is prepared for a *Master* and deserves one.

AMERICUS.

IV.

February 27, 1797.

The emissaries of France when driven from every other expedient for extenuating her depredations, have a last refuge in the example of Great Britain. The treatment which we now receive from France (say they) is not worse than that which we have received from Great Britain. If this apology were founded in fact, it would still be a miserable subterfuge. For what excuse is it to France, or what consolation to us, that she, our boasted friend and benefactress, treats us only not worse than a power which is stigmatized as an envious rival and an implacable foe?

The conduct of Great Britain, appealed to in justi-

fication of France, was admitted by all to be inexcusable. Even Gallic faction thought it so extreme as to call for immediate reprisals. The real patriots differed from them only in thinking, that an armed negotiation, to end in reprisals, if unattended with success, was preferable to immediate hostility. How dare the men, who at that period were the clamorous champions of our national dignity,—how dare they (I ask) now to stand forth the preachers not of moderation (for in the propriety of this all unite) but of tame submission—of a servility abject enough to love and cherish the hand which despoils us, to kiss the rod which stings us with unprovoked lashes? What logic, what magic, can render innocent or venial in France that which was so criminal and odious in Great Britain?

The pretext (we know) of France is, that we have permitted Great Britain to treat us in the same manner, and her deluded or debauched adherents are mean or prostrate enough to re-echo the excuse.

Let us grant, for argument's sake, all that can be pretended on this subject—namely, that through want of energy in our administration, or from the opinion which it entertained of the situation of the country, there has been too much patience under the oppressions of Great Britain. Is this really a justification to France? Is a defect of vigor in the government of one country, or an underestimate of its means for repelling injury, a sufficient cause for another government, lavish in profession of friendship, to imitate toward it the aggressions which it has suffered from an oppressor? What in private life would be said of

that man, who called himself the friend of another, and because the last had too passively allowed a third, the enemy of both, to wrest from him a portion of his property, should deduce from this a pretext to strip him of the remainder? Has language epithets too severe for such a character? Is not the guilt of unjust violence in a case like this aggravated by that of hypocrisy and perfidy?

But this is not our only reply. The truth is (and a truth we may boldly proclaim) that we never did tolerate the aggressions of Great Britain; that we have steadily resisted them, and resisted them with success. In the respectable attitude of an armed negotiation, seconded by the self-denying and very influential measure of an embargo, we sent to demand a revocation of the orders under which we suffered, and retribution for the losses which we had sustained. The orders were revoked and the retribution has been stipulated, and the stipulation is in a course of honorable and liberal execution. The redress of ancient grievances, on the ground of a reciprocity, demanded by every principle of rectitude, has been superadded to that of more recent ones.

Our flags at this moment proudly wave on the ramparts which had been so long detained from us; and Indian butcheries along the whole extent of our vast frontier have been terminated. More than this —the redress obtained from Great Britain was a principal cause of the happy accommodation of our dispute with Spain, of the recognition of our right to navigate the Mississippi, and of the establishment of a southern boundary equal to our most sanguine

wishes.* These are the fruits (and immense fruits they are) of a vigorous though temperate resistance to the aggressions of Great Britain.

'T is, therefore, in every sense false, that our government has *permitted* Great Britain *to do* as France is now *doing*. Except here and there the accidental irregularity of the commander of a particular ship, there is not one clear right which the law of nations entitles us to claim, that is not now respected by Great Britain, and to a degree unusual in the history of the treatment of neutral nations by great belligerent powers.

It follows that the suggestion on which France bottoms her ill-treatment of us is a frivolous and a colorless pretext. 'T is to confound all just ideas, to consider a temporary forbearance as a permission or acquiescence—to pretend, above all, to retaliate that injury after it has passed, has ceased, and has been redressed. We are bound, then, to conclude that our real crime in the eyes of France is, that we had the temerity to think and to act for ourselves, and did not plunge headlong into war with Great Britain; that the principal streams of our commerce, from the natural relations of demand and supply, flow through the channels of her commerce; and that the booty which it offers to rapacity exceeds the organized means of protection.

But a country, containing five millions of people,

* This consequence was foreseen and foretold. And the prediction is confirmed by that part of the declaration of war of Spain against Great Britain which makes it a charge against the latter, that in the treaty with the United States "she had no respect or consideration for the known rights of Spain," and in the sudden disappearance, after that treaty, of the obstacles which had so long impeded our negotiation with Spain.

the second in the number of its seamen, that prime sinew of maritime force, with a varied industry, and an export of sixty millions, understanding its rights, not deficient in spirit to vindicate them, if compelled against its will to exert its strength and resources, will, under the guidance of faithful and patriotic counsels, be at no loss to convince its despoilers that there is as much folly as wickedness in such a calculation. This reflection ought at once to console and to animate us; though the remembrance of former friendship and a spirit of virtuous moderation will induce us still to wish that there may be some error in appearances—that the views of France are not as violent and as hostile as they seem to be—that an amicable explanation may yet dispel the impending clouds, and brighten the political horizon with a happy reconciliation.

AMERICUS.

V.

March 13, 1797.

I have asserted that the conduct of Great Britain toward us and other neutral powers has been at no period so exceptionable as that of France at the present juncture. A more distinct view of this truth may be useful, which will be assisted by a retrospect of the principal acts of violence on both sides.

Though the circumstances were contemporarily disclosed in all our newspapers, yet so blind and deaf were we rendered by our partiality for France, that few among us, till very lately, have been aware, that the first of those acts is fairly chargeable upon

her. Such, notwithstanding, is the fact. The first in order of time is a decree of the National Convention of the 9th of May, 1793, which, reciting that neutral flags are not respected by the enemies of France, and enumerating some instances of alleged violation, proceeds to authorize the vessels of war and cruisers of France to arrest and conduct into her ports *all neutral vessels* which are found *laden* in *whole* or in *part* with *provisions belonging to neutrals*, or *merchandises* belonging to the *enemies* of France; the latter to be confiscated as prize for the benefit of the captors, the former to be detained, but paid for according to their value at the places for which they were destined.

The instances enumerated as the pretext for so direct and formal an attack upon the rights of neutral powers, except two, turn upon the pretensions to capture goods of an enemy in the ships of a friend. Of the remaining two, one is the case of an American vessel going from *Falmouth* to *St. Maloes* with a cargo of wheat, which the decree states was taken by an English frigate and carried into Guernsey, where the agents of the English Government detained the cargo, upon a promise to pay the value, as not being for French account; the other is the case of some French passengers going in a *Genoese* vessel from *Cadiz* to *Bayonne*, who were plundered on the passage by the crew of an English privateer.

There is no question but that Great Britain, from the beginning of the war, has claimed and exercised the right of capturing the property of her enemies found in neutral bottoms, and it has been unanswer-

ably demonstrated, that for this she has the sanction of the general law of nations. But France, from the exercise of that right by Great Britain, when not forbidden by any treaty, can certainly derive no justification for the imitation of the practice, in opposition to the precise and peremptory stipulations of her treaties. Every treaty which established the rule of "*free ships free goods*," must have contemplated the unequal operation of that rule to the contracting parties, when one was at peace, the other at war; looking for indemnification to the correspondent of taking friends' property in enemies' ships, and to the reciprocal effect of the rule when the state of peace and war should be reversed. To make its unequal operation in an existing war an excuse for disregarding the rule, is therefore a subterfuge for a breach of faith, which hardly seeks to save appearances. France, as she once was, would have blushed to use it. It is one, among many instances, of the attempts of revolutionary France to dogmatize mankind out of its reason, as if she expected to work a change in the faculties as well as in the habits and opinions of men.

The case of the American vessel carried to Guernsey is that of a clear infraction of neutral right. But standing singly, it was insufficient evidence of a plan of the British Government to pursue the principle. It countenanced *suspicion* of a secret order for the purpose; but it did not amount to *proof* of such an order. There might have been misapprehension or misrepresentation; or if neither was the case, the circumstance was resolvable into the mere irregularity

of particular agents ; it is unjustifiable to ascribe to a government, as the result of a premeditated plan, and to use as the ground of reprisals, a single case of irregularity happening in a detached portion of the dominions of that goverment. France was bound to have waited for more full evidence. There was no warrant in a solitary precedent for general retaliation ; even if we could admit the detestable doctrine, that the injustice of one belligerent power towards neutral nations is a warrant for similar injustice in another.

The violation of the courtesy of war in the instance of the French passengers, however brutal in itself, was truly a frivolous pretext for the decree. The frequency of irregular conduct in the commanders and crews of privateers, even in contempt of the reglations of their own governments, naturally explains such a transaction into the cupidity of individuals, and forbids the imputation of it to their governments. There never was a war in which similar outrages did not occur in spite of the most sincere endeavors to prevent them.

The natural and plain conclusion is, that the decree in question was a wanton proceeding in the French Government, uncountenanced by the previous conduct either of its enemies, or of the neutral nations who were destined to punishment for their faults.

For, the first order of the British Government authorizing the seizure of provisions is dated the sixth of June, 1793, nearly a month posterior to the French decree. As there is not the least vestige of any prior

order, the presumption is that none ever existed. If any had existed, the course of things has been such as to afford a moral certainty that it would have appeared. The subsequent date of the British order is a strong confirmation of the argument, that the affair of the vessel carried to Guernsey was nothing more than a particular irregularity.

The publicity of all the proceedings of the French Government, and the celerity of communication between Paris and London, leave no doubt that the decree of May the 9th was known in London before the order of June the 6th. It follows, that France herself furnished to Great Britain the example and the pretext for the most odious of the measures with which she is chargeable; and, that so far as precedent can justify crime, Great Britain may find in the conduct of France the vindication of her own.

An obvious reflection presents itself. How great was the infatuation of France thus to set the example of an interruption of neutral commerce in provisions, in the freedom of which she was so much more interested than her adversaries. If the detention of the cargo at Guernsey was a bait, we cannot but be astonished at the stupid levity with which it was swallowed.

We are no less struck with the eager precipitancy with which France seized the pretext for a formal and systematic invasion of the rights of neutral powers; equally regardless of the obligations of treaty and of the injunctions of the laws of nations. The presumption of the connivance of the neutral power in infractions of its rights is the only colorable ground for the

French idea of retaliation on the sufferers. Here the yet early stage of the war and the recency of the facts alleged as motives to the decree, preclude the supposition of connivance. The unjust violence of France, consequently, in resorting to retaliation, stands without the slightest veil. From this prominent trait we may distinguish, without possibility of mistake, the real character of her system.

AMERICUS.

VI.

March 27, 1797.

It has been seen that the Government of France has an indisputable title to the culpable pre-eminence of having taken lead in the violation of neutral rights; and that the first instance on the part of the British Government, is nearly a month posterior to the commencement of the evil by France. But it was not only posterior, it was also less comprehensive: that of France extended to *all provisions*, that of Great Britain to certain kinds only—CORN, FLOUR, and MEAL.

The French decree, as to the United States, was repeatedly suspended and revived. As to other neutral nations, it continued a permanent precedent to sanction the practice of Great Britain.

This decretal versatility is alone complete evidence of want of principle. It is the more censurable, because it is ascertained that it proceeded, in part at least, from a corrupt source. The sacred power of law-making became the minister and the accomplice of private rapine. Decrees exacted by the solemn

obligations of treaty were sacrificed to sea rovers—to enable them to enjoy the prey, for the seizure of which they ought to have been condignly punished.*

The next and most injurious of the acts of Great Britain is the order of the 6th of November, 1793, which instructs the commanders of ships of war and privateers to stop, detain, and carry in for adjudication all ships, *laden* with the *produce* of any French colony, or carrying *provisions* or other supplies for the use of such colony. It was under the cover of this order that were committed the numerous depredations on our commerce, which were the immediate cause of sending an envoy to Great Britain.

The terms of this order were ambiguous, warranting a suspicion that they were designed to admit of an oppressive interpretation, and yet to leave room for a disavowal of it. Whether this was really the case, or whether the order was in fact misconstrued by the British officers and tribunals in the West Indies, it is certain that the British Government, almost as soon as their construction was known in England, not only disclaimed it, but issued a new order, dated the first of January, 1794, revoking that of the sixth of November, and expressly restraining the power to detain and carry in vessels for adjudication to *such* as were laden with the *produce* of a *French island* going from a port in the island to a port in Europe, to *such* as were *laden with the like produce belonging to subjects of France* whithersoever bound, to *such* as were *laden* in

* The report of the Secretary of State mentions (as was known at the time) that one repeal was effected by the influence of the owners of a privateer, which had captured the valuable American ship "Laurens," to give effect to her condemnation.

whole or in part *with naval or military stores bound to a French island.*

This last order obviated in a great measure the mischief of the former; and though its principles were in some respect such as we ought never to recognize, yet were they conformable with the practice of the principal maritime powers in antecedent modern wars, especially of France and Great Britain.

These acts comprise the whole of those on which the British spoliations have been founded. Taken with all the latitude of construction adopted by the British officers and courts in the West Indies, they amount to this, and to no more: "*the seizure and appropriations of our corn, flour, and meal, going to a French port, on the condition of paying for them, the seizure and confiscation of our vessels* with their cargoes, when *laden* with the *produce* of a *French colony*, or in the act of carrying provisions or other supplies for the use of said colony." Our trade with France herself, except in corn, flour, and meal, and in contraband articles, has in the worst of times remained unmolested, and has even been allowed to be carried on directly from British ports.

Iniquitious and oppressive as were the acts of Great Britain, how very far short do they fall of the more iniquitious and oppressive decrees of France, as these have been construed and acted upon, not only by the colonial administrations, but by some of its tribunals in Europe! The decree of the second of July, 1796, purports in substance, that France will treat the neutral powers as they have permitted her enemies to treat them. But under this masked battery the

whole of our trade with the enemies of France has been assailed. The two edicts of her proconsuls in the West Indies * proclaim the capture of all neutral vessels bound to or coming from English ports, and the uniform consequence is confiscation of vessel and cargo. We are now likewise officially informed that a French consular tribunal at Cadiz has condemned neutral vessels carried in there, on the same broad principle. The evil to us has been magnified by various aggravations. Our vessels going from one neutral port to another, even our vessels going from French ports, have been the victims of the piratical spirit which dictated those edicts. Outrage, imprisonment, fetters, disease, and death, inflicted or brought upon the commanders and crews of our vessels, cause the bitter cup of our sufferings to overflow, and leave the imagination at a loss for a parallel without seeking for it in the ferocious regions of Barbary.

The ambiguity of the British order of November was a just subject of reproach to its authors. What shall be said of the perfidious ambiguity of the French decree of the 2d of July, 1796? When retaliation of the partial injuries which neutral nations have suffered from the enemies of France was denounced, who could have dreamt that a universal war on their trade was meditated? Who that has a spark of the American in his soul can refuse his utmost indignation, as well at the manner as at the matter of this atrocious proceeding? Not only the partisans of France, the advocates for the honor of republican

* Santhonax & Co., November 27, 1796. Victor Hugues, 13th Pluviose, 5th year of the Republic.

government, but the friends of human nature, must desire that the final explanation may reject, as a criminal abuse, the practice upon that decree, and repair as far as possible the mischiefs which it has occasioned.

But the treaty with Great Britain (still exclaim the dupes or hirelings of France), that abominable instrument, is the Pandora's box from which all our misfortunes issue. When that instrument was confirmed, who could have expected any thing better?

Peace, ye seduced or seducing babblers! Had Denmark or Sweden any share in making that reprobated treaty? Besides the refutation of your flimsy pretence, by the ill-treatment in other shapes of several of the neutral powers in Europe—by the information from Cadiz of the indiscriminate seizure and condemnation of neutral vessels going to or coming from English ports,—do ye not read in the recent accounts from St. Bartholomews, a *Swedish* island, that not *Americans* only, that Danes, that Swedes, that all the neutral nations partake in the common calamity—alike the prey of a devouring rapacity? Will ye still then insist on the barefaced imposture of ascribing to the treaty grievances which are the mere effects of a spirit of oppression and rapine? Read the letter of Mr. Skipwith to Mr. Monroe, dated at Paris, the third of October, 1794, *prior* to the signature of the treaty by Mr. Jay. Remember that he is an American agent, acting under the eye of an American minister, and that both the minister and the agent are distinguished by a partiality for France, which exempts them from the suspicion of exaggerating her misdeeds. What does that letter

tell us? Why, in express terms, that "INNUMERABLE embarrassments and difficulties had for a long time oppressed her commerce *in different ports of the republic;* that if the French Government did not soon remedy the *incessant abuses and vexations* practised *daily* upon our merchants, *the trade of the United States with France* must cease." Hence may we learn, that long before our treaty with Great Britain, the vexations of our trade in the ports of France were so extreme as to have become intolerable; that "the indiscriminate capture of our vessels at sea by the vessels of war of the republic," * formed only one class of the injuries which our commerce has sustained: in a word, that the predatory system of France existed before the treaty, and has only of late acquired greater activity from the cravings of an exhausted treasury.

The man who, after this mass of evidence, shall be the apologist of France, and the calumniator of his own government, is not an American. The choice for him lies between being deemed a fool, a madman, or a traitor.

THE STAND.†

(From the New York *Commercial Advertiser*).

I.

March 10, 1798.

The enlightened friends of America never saw greater occasion of disquietude than at the present

* This is also a passage verbatim from Mr. Skipwith's letter—and he produces a long list of cases to support his assertions.

† We were now on the verge of the X. Y. Z. letters and an open rupture with France. To arouse the people at this crisis to their true policy towards the French, Hamilton published "The Stand."

juncture. Our nation, through its official organs, has been treated with studied contempt and systematic insult: essential rights of the country are perseveringly violated, and its independence and liberty eventually threatened by the most flagitious, despotic, and vindictive government that ever disgraced the annals of mankind; by a government marching with hasty and colossal strides to universal empire, and in the execution of this hideous project, wielding with absolute authority the whole physical force of the most enthralled but most powerful nation on earth. In a situation like this, how great is the cause to lament, how afflicting to every heart alive to the honor and interests of its country to observe, that distracted and inefficient councils, that a palsied and unconscious state of the public mind, afford too little assurance of measures adequate either to the urgency of the evils which are felt, or to the magnitude of the dangers which are in prospect.

When Great Britain attempted to wrest from us those rights, without which we must have descended from the rank of freemen, a keen and strong sense of injury and danger ran with electric swiftness through the breasts of our citizens. The mass and weight of talents, property, and character hastened to confederate in the public cause. The great body of our community everywhere burned with a holy zeal to defend it, and were eager to make sacrifices on the altar of their country.

If the nation with which we were called to contend was then the preponderating power of Europe; if by her great wealth and the success of her arms she was

in a condition to bias or to awe the cabinets of princes; if her fleets covered and domineered over the ocean, facilitating depredation and invasion; if the penalties of rebellion hung over an unsuccessful contest; if America was yet in the cradle of her political existence; if her population little exceeded two millions; if she was without government, without fleets or armies, arsenals or magazines, without military knowledge; still her citizens had a just and elevated sense of her rights; were thoroughly awake to the violence and injustice of the attack upon them; saw the conduct of her adversary without apology or extenuation; and under the impulse of these impressions and views, determined, with little short of unanimity, to brave every hazard in her defence.

This magnanimous spirit was the sure pledge that all the energies of the country would be exerted to bring all its resources into action; that whatever was possible would be done towards effectual opposition; and this, combined with the immense advantage of distance, warranted the expectation of ultimate success. The event justified the expectation and rewarded the glorious spirit from which it was derived.

Far different is the picture of our present situation! The five tyrants of France, after binding in chains their own countrymen, after prostrating surrounding nations, and vanquishing all external resistance to the revolutionary despotism at home, without the shadow of necessity, with no discernible motive, other than to confirm their usurpation and extend the sphere of their domination abroad,—these implacable tyrants obstinately and remorselessly persist in prolonging

the calamities of mankind, and seem resolved, as far as they can, to multiply and perpetuate them. Acting upon the pretension to universal empire, they have at length in fact, though not in name, decreed war against all nations not in league with themselves; and towards this country in particular, they add to a long train of unprovoked aggressions and affronts the insupportable outrage of refusing to receive the extraordinary ambassadors whom we sent to endeavor to appease and conciliate. Thus have they, in regard to us, filled up the measure of national insult and humiliation. 'T is not in their power, unless we are accomplices in the design, to sink us lower. 'T is only in our own power to do this by an abject submission to their will.

But though a knowledge of the true character of the citizens of this country will not permit it to be suspected that a majority either in our public councils or in the community can be so degraded or infatuated; yet to the firm and independent lover of his country, there are appearances at once mortifying and alarming.

Among those who divide our legislative councils, we perceive hitherto, on the one side, unremitting efforts to justify or excuse the despots of France, to vilify and discredit our own government, of course to destroy its necessary vigor, and to distract the opinion and to damp the zeal of our citizens,—what is worse, to divert their affections from their own to a foreign country; on the other side, we have as yet seen neither expanded views of our situation, nor measures at all proportioned to the seriousness and

extent of the danger. While our independence is menaced, little more is heard than of guarding our trade, and this too in very feeble and tremulous accents.

In the community, though in a sounder state than its representatives, we discover the vestiges of the same divisions which enervate our councils. A few —happily, a contemptible few,—prostituted to a foreign enemy, seem willing that their country should become a province to France. Some of these dare even to insinuate the treasonable and parricidal sentiment, that in case of invasion they would join the standard of France. Another and a more considerable part are weak enough to appear disposed to sacrifice our commerce, to endure every indignity, and even to become tributary, rather than to encounter war or to increase the chances of it; as if a nation could preserve any rights—could even retain its freedom,—which should conduct itself on the principle of passive obedience to injury and outrage; as if the debasement of the public mind did not include the debasement of the individual mind, and the dereliction of whatever adorns or exalts human nature; as if there could be any security in compounding with tyranny and injustice by degrading compliances; as if submission to the existing violations of our sovereignty would not invite still greater, and whet the appetite to devour us by the allurement of an unresisting prey; as if war was ever to be averted by betraying unequivocally a pusillanimous dread of it as the greatest of all evils.

This country has doubtless powerful motives to cultivate peace. It is its policy, for the sake of this

object, to go a great way in yielding secondary interests, and to meet injury with patience, as long as it could be done without the manifest abandonment of essential rights—without absolute dishonor. But to do more than this is suicide in any people who have the least chance of contending with effect. The conduct of our government has corresponded with the cogent inducements to a pacific system. Toward Great Britain it displayed forbearance—toward France it hath shown humility. In the case of Great Britain its moderation was attended with success. But the inexorable arrogance and rapacity of the oppressors of unhappy France bar all the avenues to reconciliation as well as to redress, accumulating upon us injury and insult, till there is no choice left but between resistance and infamy. My countrymen, can ye hesitate which to prefer? Can ye consent to taste the brutalizing cup of disgrace; to wear the livery of foreign masters; to put on the hateful fetters of foreign bondage? Will it make any difference to you, that the badge of your servitude is a *cap* rather than an *epaulet?* Will tyranny be less odious because five instead of one inflict the rod? What is there to deter you from the manful vindication of your rights and your honor?

With an immense ocean rolling between the United States and France; with ample materials for shipbuilding, and a body of hardy seamen more numerous and more expert than France can boast; with a population exceeding five millions, spread over a wide extent of country, offering no one point, the seizure of which, as of the great capitals of Europe, might

decide the issue; with a soil liberal of all the productions that give strength and resource; with the rudiments of the most essential manufactures, capable of being developed in proportion to our want; with a numerous and, in many quarters, well-appointed militia; with respectable revenues and a flourishing credit; with many of the principal sources of taxation yet untouched; with considerable arsenals, and the means of extending them; with experienced officers ready to form an army under the command of the same illustrious chief who before led them to victory and glory, and who, if the occasion should require it, could not hesitate to obey the summons of his country; —what a striking and encouraging contrast does this situation in many respects present, to that in which we defied the thunder of Britain! What is there in it to excuse or palliate the cowardice and baseness of a tame surrender of our rights to France?

The question is unnecessary. The people of America are neither idiots nor dastards. They did not break one yoke to put on another. Though a portion of them have been hitherto misled; yet not even these, still less the great body of the nation, can be long unaware of the true situation, or blind to the treacherous arts by which they are attempted to be hoodwinked. The unfaithful and guilty leaders of a foreign faction, unmasked in all their intrinsic deformity, must quickly shrink from the scene appalled and confounded. The virtuous whom they have led astray will renounce their exotic standard. Honest men of all parties will unite to maintain and defend the honor and the sovereignty of their country.

The crisis demands it. 'T is folly to dissemble. The despots of France are waging war against us. Intoxicated with success and the inordinate love of power, they virtually threaten our independence. All amicable means have in vain been tried towards accommodation. The problem now to be solved is whether we will maintain or surrender our sovereignty. To maintain it with firmness is the most sacred of duties, the most glorious of tasks. The happiness of our country, the honor of the American name, demands it; the genius of independence exhorts to it; the secret mourning voice of oppressed millions in the very country whose despots menace us, admonish to it by their suffering example; the offended dignity of man commands us not to be accessory to its further degradation; reverence to the Supreme Governor of the universe enjoins us not to bow the knee to the modern Titans* who erect their impious crests against him and vainly imagine they can subvert his eternal throne.

But 't is not enough to resist. 'T is requisite to resist with energy. That will be a narrow view of our situation which does not contemplate that we may be called, at our very doors, to defend our independence and liberty, and which does not provide against it by bringing into activity and completely organizing all the resources of our country. A respectable naval force ought to protect our commerce, and a respectable army ought both to diminish the temptation to invasion, by lessening the apparent chance of success, and to guarantee us not only against the signal suc-

* A race of giants fabled of old to have made war on heaven.

cess of such an attempt, but against the serious though partial calamities which in that case would certainly await us if we have to rely on militia alone against the enterprises of veteran troops, drenched in blood and slaughter, and led by a skilful and daring chief.

TITUS MANLIUS.

II.

April 4, 1798.

The description of *vice*, by a celebrated poet, may aptly be applied to the Revolutionary Government of France. It is

> "A monster of such horrid mien
> As to be *hated* needs but to be *seen*."

Unfortunately, however, for mankind, a species of moral pestilence has so far disordered the mental eye of a considerable portion of it, as to prevent a distinct view of the deformities of this prodigy of human wickedness and folly. It is the misfortune of this country in particular, that too many among its citizens have seen the monster, in all its dreadful transformations, with complacency or toleration. Nor is it among the least of the contradictions of the human mind, that a religious, moral, and sober people should have regarded with indulgence so frightful a volcano of atheism, depravity and absurdity; that a gentle and humane people should have viewed without detestation, so hateful an instrument of cruelty and bloodshed; that a people having an enlightened and ardent attachment to genuine liberty, should have contemplated without horror so tremendous an engine of despotism and slavery. The film indeed begins to

be removed, but the vision of many of those who have been under its influence is not yet restored to the necessary energy or clearness.

It is of the last importance to our national safety and welfare, that the remaining obscurity should be speedily dispelled. Till this shall be the case, we shall stand on the brink of a precipice.

To exhibit the hydra in all its horrible pre-eminence of guilt and mischief, would require volumes. Slight sketches, chiefly to portray its character in reference to other nations, are all that will comport with the plan of these papers.

In retracing the progress of a war which has immersed Europe in blood and calamity, it is an error as common as it is strange to acquit France of responsibility, and throw the whole blame upon her adversaries. This is a principal source of the indulgence which is shown to the extravagances and enormities of her revolution. And yet the plainest facts demonstrate that the reverse of this supposition is far more agreeable to truth. It required all the bold imposing pretences of the demagogues of France, all the docile partiality of a warm admiration for her revolution, to have secured a moment's success to so glaring a deception.

The origin of the war is usually charged to the treaty of Pilnitz and to the counter-revolutionary projects of the parties to it.

To this day we are without authentic and accurate evidence of the nature of that treaty. Taking its existence for granted, there is not the least proof that it comprehended any other powers than Austria,

Prussia, and Sardinia. Beyond these therefore unless suspicion be substituted for fact, it could not afford even a pretext for hostility. It is likewise certain that, after the date assigned to the treaty of Pilnitz, the emperor, who was the reputed head of the confederacy, gave strong proof of the renunciation of its object, if hostile to the revolution, by signifying, through his ministers, to all the foreign courts, his determination to acquiesce in the constitution of 1792, accepted by Louis the XVI.

The diplomatic correspondence between France and Austria, which preceded the rupture, evinces that the treaty of Pilnitz was not the cause of the war, for it is not even mentioned. The immediate, ostensible cause, as it there appears, was the refusal of Austria to disarm in compliance with the peremptory demand of France: a demand to which this apparently very reasonable reply was given—that France had previously armed to a greater extent; and that Austria could not safely reduce her force while France remained in so disturbed and inflamed a state as to leave her neighbors every moment exposed to the enterprises of her revolutionary fervor. There is no absolute criterion by which it can be pronounced whether this reply was merely a pretext or the dictate of a serious apprehension. But it is certain that the correspondence discovers great appearance of moderation and candor, on the part of the imperial cabinet, and it is not to be denied, that the state of effervescence of the French nation at this juncture furnished real cause of alarm to the neighboring governments.

It is then, at best, problematical, whether France in declaring war, as she did at the same time against Austria and Prussia, was actuated by the conviction that it was necessary to anticipate and disconcert the unfriendly views of those powers; or whether the war, as has been suggested with great probability, was sought by the republican party as a means of embarrassing the executive government, and paving the way for the overthrow of royalty. Two things well established are instructive on this point. The one, that the king was driven against his wish, by a ministry forced upon him by the popular party, to propose the declaration of war, which he considered as the tomb of his family; the other, that Brissot, the head of the then prevailing faction, some time afterwards exultingly boasted that, "but for this war, the revolution of the tenth of August would never have taken place—that, but for this war, France would never have been a republic."

Admitting nevertheless that the true source of the war with Austria and Prussia is enveloped in some obscurity, there is none as to the wars in which France became subsequently engaged. It is clear as to them that she was the original aggressor.

It appeared from contemporary testimony that one of the first acts of that assembly which dethroned the king was, in a paroxysm of revolutionary frenzy, to declare itself "*A Committee of Insurrection* of the whole human race, for the purpose of overturning all existing government." This extravagant declaration surpasses any thing to be found in the ample record of human madness. It amounted to an act of hostility

against mankind. The republic of America no less than the despotism of Turkey was included in the anathema. It breathed that wild and excessive spirit of fanaticism which would scruple no means of establishing its favorite tenets; and which, in its avowed object, threatening the disorganization of all governments, warranted a universal combination to destroy the monstrous system of which it was the soul.

The decrees of the 19th of November and the 15th of December, 1792, were modifications of the same spirit. The first offered fraternity and assistance to every people who should wish to recover their liberty, and charged the executive power to send orders to their generals to give that assistance, and to defend *those citizens* who had been or might be vexed for the cause of liberty.

The last declared that the French nation would *treat as* enemies *any people* who, refusing or *renouncing liberty* and *equality*, were desirous of preserving, recalling, or entering into accommodation with their prince and privileged castes.

The first was a general signal to insurrection and revolt. It was an invitation to the seditious of every country, in pursuit of chimerical schemes of more perfect liberty, to conspire under the patronage of France against the established government, however free. To assist a people in a reasonable and virtuous struggle for liberty, already begun, is both justifiable and laudable; but to incite to revolution everywhere by indiscriminate offers of assistance beforehand, is to invade and endanger the foundation of social tranquillity. There is no term of reproach or execration too strong for so flagitious an attempt.

The last of the two decrees is not merely in spirit—it is in terms equivalent to a manifesto of war against every nation having a prince or nobility. It declares explicitly and formally that the French nation *will treat as enemies every people* who may desire to preserve or restore a government of that character.

It is impossible not to feel the utmost indignation against so presumptuous and so odious a measure. It was not only to scatter the embers of a general conflagration in Europe; it was to interfere coercively in the interior arrangements of other nations; it was to dictate to them, under the penalty of the vengeance of France, what form of government they should live under; it was to forbid them to pursue their political happiness in their own way; it was to set up the worst of all despotisms, a despotism over opinion, not against one nation, but against almost all nations. With what propriety is the interference of the powers ultimately coalesced against France, in her interior arrangements, imputed to them as an unpardonable crime, when her leaders had given so terrible an example, and had provoked retaliation as a means of self-preservation? *

These decrees preceded the transactions which immediately led to a rupture between France and the other powers, Austria and Prussia excepted.

It is idle to pretend, that they did not furnish to those powers just cause of war. There is no rule of

* If it be true, as pretended, that Austria and Prussia first interfered in this way with France, it was no plea for her to retaliate on all the rest of Europe. Great Britain in particular, as far as appears, had observed a fair neutrality. Yet the principle of the French decree was emphatically pointed against her, by the open reception of deputations of malcontents, and public declarations to them, on behalf of the French Government, avowing the desire of seeing all thrones overturned, of a national convention, and a republican revolution in England.

public law better established, or on better grounds, than that when one nation unequivocally avows maxims of conduct dangerous to the security and tranquillity of others, they have a right to attack her and to endeavor to disable her from carrying her schemes into effect. They are not bound to wait till inimical designs are matured for action, when it may be too late to defeat them.

How far it may have been wise in a particular government to have taken up the gauntlet, or if, in its option, to have left France to the fermentations of the pernicious principles by which its leaders were actuated, is a question of mere expediency, distinct from the right. It is also a complicated and difficult question, one which able and upright men might decide different ways. But the right is still indisputable. The moment the convention vomited forth these venomous decrees, all the governments threatened were justifiable in making war upon France.

Neither were they bound to be satisfied with after-explanations or qualifications of the principles which had been declared. They had a right to judge conscientiously whether reliance could be placed on any pretended change of system, and to act accordingly. And while the power of France remained in the same men, who had discovered such hostile views, and while the effervescence of the public mind continued at its height, there could not have been, in the nature of things, any security in assurances of greater moderation. Fanaticism is a spirit equally fraudulent and intractable. Fanatics may dissemble the better to effect their aims, but they seldom suddenly reform. No

faith is due to the reformation which they may effect, unless it has been the work of time and experience.

But whether a wrong or right election, in point of expediency, may have been made by all or any of the powers which, after the passing of those decrees, became engaged in hostility with France, it is not the less true, that her government was the first aggressor, and is primarily chargeable with the evils which have followed. This conclusion is greatly aided by the striking fact, that it was France which declared war, not only against Austria and Prussia, but against England, Spain, Sardinia, and Holland.

Two very important inferences result from the facts which have been presented: one, that in blowing up the dreadful flame which has overwhelmed Europe in misfortune, France is the party principally culpable; the other, that the prominent original feature of her revolution is the spirit of proselytism, or the desire of new modelling the political institutions of the rest of the world according to her standard. The course of the revolution also demonstrates that, whatever change of system may have been at any time pretended, or however the system may in particular instances have yielded to a temporary policy, it has continued in the main to govern the conduct of the parties who have successively triumphed and tyrannized.

TITUS MANLIUS.

III.

April 7, 1798.

In reviewing the disgusting spectacle of the French Revolution, it is difficult to avert the eye entirely from

those features of it which betray a plan to disorganize the human mind itself, as well as to undermine the venerable pillars that support the edifice of civilized society. The attempt by the rulers of a nation to destroy all religious opinion, and to pervert a whole nation to atheism, is a phenomenon of profligacy reserved to consummate the infamy of the unprincipled reformers of France. The proofs of this terrible design are numerous and convincing.

The animosity to the Christian system is demonstrated by the single fact of the ridiculous and impolitic establishment of the decades, with the evident object of supplanting the Christian Sabbath. The inscriptions by public authority on the tombs of the deceased, affirming death to be an eternal sleep, witness the desire to discredit the belief of the immortality of the soul. The open profession of atheism in the convention,* received with acclamations; the honorable mention on its journals of a book professing to prove the nothingness of all religion†; the institution of a festival to offer public worship to a courtesan decorated with the pompous title of "Goddess of Reason"; the congratulatory reception of impious children appearing in the hall of the convention to lisp blasphemy against the King of kings, are among the dreadful proofs of a conspiracy to establish atheism on the ruins of Christianity,—to deprive mankind of its best consolations and most animating hopes, and to make a gloomy desert of the universe.

Latterly, the indications of this plan are not so fre-

* By Dupont, Danton, etc.

† Written and presented by Anacharsis Clootz, calling himself orator of the human race.

quent as they were, but from time to time something still escapes which discovers that it is not renounced. The late address of Buonaparte to the Directory is an example. That unequalled conqueror, from whom it is painful to detract, in whom one would wish to find virtues worthy of his shining talents, profanely unites religion (not superstition) with royalty and the feudal system as the scourges of Europe for centuries past. The decades likewise remain the *catapulta* which are to batter down Christianity.

Equal pains have been taken to deprave the morals as to extinguish the religion of the country, if indeed morality in a community can be separated from religion. It is among the singular and fantastic vagaries of the French Revolution, that while the Duke of Brunswick was marching to Paris a new law of divorce was passed, which makes it as easy for a husband to get rid of his wife, and a wife of her husband, as to discard a worn-out habit.* To complete the dissolution of those ties, which are the chief links of domestic and ultimately of social attachment, the journals of the convention record with guilty applause the accusations preferred by children against their parents.

It is not necessary to heighten the picture by sketching the horrid group of proscriptions and murders which have made France a den of pillage and slaughter; blackening with eternal opprobrium the very name of man.

The pious and moral weep over these scenes as a

* This law, it was understood, had been lately modified in consequence of its manifestly pernicious tendency: but upon a plan which, according to the opinions of the best men in the two councils lately banished, would leave the evil in full force.

sepulchre destined to entomb all they revere and esteem. The politician who loves liberty, sees them with regret as a gulf that may swallow up the liberty to which he is devoted. He knows that morality overthrown (and morality *must* fall with religion), the terrors of despotism can alone curb the impetuous passions of man, and confine him within the bounds of social duty.

But let us return to the conduct of revolutionary France towards other nations, as more immediately within our purpose.

It has been seen that she commenced her career as the champion of universal liberty; and proclaiming destruction to the governments which she was pleased to denominate despotic, made a tender of fraternity and assistance to the nations whom they oppressed. She at the same time disclaimed conquest and aggrandizement.

But is has since clearly appeared that at the very moment she was making these professions, and while her diplomatic agents were hypocritically amusing foreign courts* with conciliatory explanations and promises of moderation, she was exerting every faculty, by force and fraud, to accomplish the very conquest and aggrandizement which she insidiously disavowed. The people of Belgium, ensnared by fair pretences, believed that in abandoning the defence of their country and the cause of their ancient sovereign, they acquired a title to enjoy liberty under a government of their own choice, protected by France. Contrary to the hopes which were

* England among the rest.

inspired—contrary to the known will of a large majority of that people—contrary to all their religious and national prejudices, they have been compelled to become departments of France. And their violated temples have afforded a rich plunder to aliment further conquest and oppression. The Dutch, seduced by the same arts to facilitate rather than obstruct the entrance of a French army into their country, thought they were only getting rid of their stadtholder and nobles, and were to retain their territory and their wealth, secured by such a civil establishment as they should freely choose. Their reward is the dismemberment of their country and the loss of their wealth by exhausting contributions; and they are obliged to take a government, dictated by a faction openly countenanced and supported by France. Completely a province of France, in imitation of their frantic masters they are advancing with rapid strides to a lawless tyranny at home.* France, professing eternal hatred to kings, was to be the tutelary genius of republics. Holland, Genoa, Venice, the Swiss Canton, and the United States, are agonizing witnesses of her sincerity.

Of undone Holland no more need be said; nothing remains for us but to exercise tender sympathy in the unfortunate fate of a country which generously lent its aid to establish our independence, and to deduce from her melancholy example an instructive lesson to repel with determined vigor the mortal embrace of her seducer and destroyer.

Genoa, a speck on the globe, for having at every

* By the last accounts, some of the most independent citizens have been seized and imprisoned merely for the constitutional exercise of their opinion.

hazard resisted the efforts of the enemies of France to force her from a neutral station, is recompensed with a subversion of her government and the pillage of her wealth, by compulsory and burthensome contributions.

Venice is no more! In vain had she preserved a faithful neutrality, when, perhaps, her interposition might have inclined the scale of victory in Italy against France. A few of her citizens* kill some French soldiers. Instant retaliation takes place. Every atonement is offered. Nothing will suffice but the overthrow of her government. 'T is effected. Her own citizens, attracted by the lure of democracy, become accessory to it, and receive a popular government at the hand of France. What is the sequel? what the faith kept with them? It suits France to bribe the emperor to a surrender of the Netherlands and to peace, that she may pursue her projects elsewhere with less obstacle. It suits France to extend her power and commerce by the acquisitions of portions of the Venetian territories. The bribe is offered and accepted. Venice is divided. She disappears from the map of nations. The tragedy of Poland is re-enacted with circumstances of aggravated atrocity. France is perfidious enough to sacrifice a people who, at her desire, had consented to abrogate their privileged castes to the chief of those despots against whom she had vowed eternal hatred.

The Swiss Cantons—the boast of republicans—the model to which they have been glad to appeal in proof that a republican government may consist with the order and happiness of society—the old and faithful allies of France, who are not even pretended to have

* Were they not French agents employed to create the pretext?

deviated from sincere neutrality,—what are they at this moment? Perhaps like Venice, a *story told!* The despots of France had found pretences to quarrel with them; commotions were excited; the legions of France were in march to second the insurgents. Little other hope remains than that the *death* of this respectable people will be as glorious as their life; that they will sell their independence as dearly as they bought it. But why despair of a brave and virtuous people who appear determined to meet the impending danger with a countenance emulous of their ancient renown?

The United States—what is their situation? Their sovereignty trampled in the dust, and their commerce bleeding at every pore, speak in loud accents the spirit of oppression and rapine which characterizes the usurpers of France. But of this a distinct view is requisite, and will be taken.

In these transactions we discover ambition and fanaticism marching hand in hand—bearing the ensigns of hypocrisy, treachery, and rapine. The dogmas of a false and fatal creed second the weapons of ambition. Like the prophet of Mecca, the tyrants of France press forward with the alcoran of their faith in one hand and the sword in the other. They proselyte, subjugate, and debase; no distinction is made between republic and monarchy; all must alike yield to the aggrandizement of the "*great nation*"—the distinctive, the arrogant appellation lately assumed by France to assert in the face of nations her superiority and ascendency. Nor is it a mere title with which vanity decorates itself—it is the substantial claim of dominion. France, swelled to a gigantic size, and aping ancient Rome, except in her

virtues, plainly meditates the control of mankind, and is actually giving the law to nations. Unless they quickly rouse and compel her to abdicate her insolent claim, they will verify the truth of that philosophy, which makes man in his natural state a quadruped, and it will only remain for the miserable animal, converting his hands into paws in the attitude of prone submission, to offer his patient and servile back to whatever burthens the *lordly* tyrants of France may think fit to impose.

TITUS MANLIUS.

IV.

April 12, 1798.

In the pursuit of her plan of universal empire, the two objects which now seem to occupy the attention of France, are a new organization of Germany favorable to other influence, and the demolition of Great Britain. The subversion and plunder, first of Portugal and next of Spain, will be merely collateral instances in the great drama of iniquity.

In the new distribution of the territories, population, and political power of the Germanic body, which has been announced as in contemplation of the Directory, three characters are conspicuous: a despotism to build up rivals to the imperial chief, strong enough to feel the sentiment of competition, but too weak to hazard it alone, who will therefore stand in need of the patronage of France, and, as a consequence, will facilitate her influence in the affairs of the empire; a generosity in making compensation, at the expense of others, for the spoils with which she has aggrandized herself; a facility of transferring communities like herds of

cattle from one master to another, without the privilege of an option. In a project like this, it is impossible to overlook the plain indications of a restless, overbearing ambition, combined with a total disregard of the rights and wishes of nations. The people are counted for nothing, their masters every thing.

The conduct of France towards Great Britain is the copy of that of Rome towards Carthage. Its manifest aim is to destroy the principal obstacle to a domination over Europe. History proves that Great Britain has repeatedly upheld the balance of power there, in opposition to the grasping ambition of France. She has no doubt occasionally employed the pretence of danger, as the instrument of her own ambition; but it is not the less true that she has been more than once an essential and effectual shield against real danger. This was remarkably the case in the reign of Louis the XIVth, when the security of Europe was seriously threatened by the successful enterprises of that very ambitious monarch.

The course of the last negotiation between France and Britain leaves no doubt that the former was resolved against peace on any practicable terms. This of itself indicates that the destruction of the latter is the direct object in view. But this object is not left to inference. It has been fastidiously proclaimed to the world; and the necessity of crushing the *tyrant* of the *sea* has been trumpeted as a motive to other powers to acquiesce in the execution of a plan by which France endeavors to become the *tyrant* both of *sea* and *land*. The understanding of mankind has, at the same time, been mocked with the proposition that the

peace of Europe would be secured by the aggrandizement of France on the ruins of her rivals; because then, it is said, having nothing to fear, she would have no motive to attack; as if moderation was to be expected from a government or people having the power to impose its own will without control. The peace of Europe would in such a case be the peace of vassalage.

Towards the execution of the plan of destroying Great Britain, the rights of other nations are daringly and openly invaded. The confiscation is decreed of all vessels with their cargoes, if composed in any part of articles of British fabric; and all nations are to be compelled to shut their ports against the meditated victim. Hamburg is stated to have already reluctantly yielded to this humiliating compulsion.

While the demolition of Great Britain is eagerly pursued as a primary object, that of Portugal seems designed to form an episode in the tragedy. Her fears had induced her to buy a peace. The money she had paid was the immediate instrument of the revolution of September last. Yet no sooner had the news of pacification with the emperor reached Paris, than pretences were sought to elude the ratification of the purchased treaty. A larger tribute was demanded —more probably than it was expected Portugal would be able to pay, to serve as an excuse for marching an army to revolutionize and plunder.* The blow may perhaps be suspended by further sacrifices, but it is not likely to be finally averted.

Spain, too, was in a fair way of enjoying the fruits of her weakness in putting on the yoke of France, and of

* Such is the account of the transaction received through authentic channels.

furnishing another proof of the general scheme of aggrandizement and oppression. The demand of the cession of Louisiana, long pressed upon her, had at length become categoric. The alternative was to comply or offend. The probability is that before this time the cession has been made; and Spain has learnt to her cost that the chief privilege of an ally of France is to be plundered at discretion. With the acquisition of Louisiania, the foundation will be laid for stripping her of South America and her mines; and perhaps for dismembering the United States. The magnitude of this mighty mischief is not easily calculated.

Such vast projects and pretensions pursued by such unexampled means are full evidence of a plan to acquire an absolute ascendant among nations. The difficulties in the final execution of a plan of this kind are, with many, decisive reasons against its existence.

But, in the case of ancient Rome, did it not in fact exist, and was it not substantially realized? Does the experience of the past day warrant the opinion that men are not as capable of mad and wicked projects as they were at any former period? Does not the conduct of the French Government display a vastness and sublimation of views, an enormity of ambition, and a destitution of principle which render the supposition of such a design probable? Has not a more rapid progress been made towards its execution than was ever made by Rome in an equal period? In their intercourse with foreign nations, do not the Directory affect an ostentatious imitation of Roman pride and superiority? Is it not natural to conclude that the same spirit points to the same ends? The project is possi-

ble. The evidence of its existence is strong, and it will be the wisdom of every other state to act upon the supposition of its reality.

Let it be understood, that the supposition does not imply the intention to reduce all other nations formally to the condition of provinces. This was not done by Rome in the zenith of her greatness. She had her provinces, and she had her allies. But her allies were in fact her vassals. They obeyed her nod. Their princes were deposed and created at pleasure.

Such is the proud pre-eminence to which the ambition of France aspires! After securing as much territory as she thinks it expedient immediately to govern, after wresting from Great Britain and attaching to herself the command of the sea, after despoiling Spain of the riches of Mexico and Peru, after attaining by all these means to a degree of strength sufficient to defy and awe competition, she may be content, under the modest denomination of allies, to rule the rest of the world by her frown or her smile.

The character of the actual Directory of France justifies the imputation to them of any project the most extravagant and criminal. Viewed internally, as well as externally, their conduct is alike detestable. They have overturned the constitution, which they were appointed to administer, with circumstances of barefaced guilt that disgrace a revolution, before so tarnished as seemed scarcely to admit of greater degradation, and have erected in its stead a military despotism, clothed but not disguised with the mere garb of the constitution which they have abolished. In the accomplishment of this usurpation, they have assassinated

one of their colleagues * and seized and banished another, together with all those members of the two councils who were disposed and able to combat their pernicious aims. They have done more; not content with rendering themselves masters of the two councils, and converting them into the mere pageants of national representation, they have thought it proper to secure their own power by exiling or imprisoning such private citizens as they feared might promote the future election of men hostile to their views, on the futile pretence of a counter-revolutionary plot, to be effected by *royalizing* the elections. Thus have they not only monopolized all the power for the present, but they have made provisions for its perpetuation, so long at least as the Prætorian bands will permit.

No impartial man can doubt that the plot charged upon the exiled members is a forgery. The characters of several of the accused belie it. Barthelemy and Pichegru are virtuous men. The former has long merited and possessed this character. The latter has given numerous proofs of a good title to it; his only fault seems to have been that of enthusiasm in the worst of causes. Neither of them, like *Dumourier*, had been, from his entrance on public life, marked out as the votary of an irregular ambition. The alleged object of the plot, as to such men, from the circumstances of the conjuncture, was wholly improbable; nothing like satisfactory proof has come to light. But the decisive argument of their innocence is that the usurpers did not dare to confront them with a fair legal

* Carnot, as was reported at the time, and as is confirmed by nothing having been since heard of him. He had been too deeply in the secrets of the violent party. It was necessary to silence him.

accusation and trial. It was so clearly their interest and policy to have justified themselves by establishing the guilt of the accused, if in their power, that the omission to attempt it is the demonstration of its impossibility. Having all authority in their own hands, and the army at their devotion, they had nothing to fear from the pursuit; and they must have foreseen that the banishment without trial would finally marshal public opinion against them. There can be little doubt that the people of France at this moment regard with compassion and regret the banished directors and deputies, and with horror and detestation the authors of their disgrace. But the people of France internally are annihilated; to their liberty and happiness this last usurpation gave a more fatal blow than any or all of the former. It has more of system in it, been less sanguinary, and is less likely to provoke resistance from despair.

The inference from the transaction is evident. The real crime of the banished was the desire of arresting the mad career of the Directory, and of restoring peace to France, in the hope that peace might tend to settle the government on the foundation of order, security, and tranquillity. The majority of the Directory foresaw that peace would not prove an element congenial with the duration of their power; or perhaps, under the guidance of Sieyes, the conjurer of the scene, they judged it expedient to continue in motion the revolutionary wheel till matters were better prepared for creating a new *dynasty* and a new *aristocracy** to

* There is good evidence that this, at bottom, is the real plan of the Abbé Sieyes, and some of the most influential in the executive department are his creatures.

regenerate the exploded monarchy of France with due regard to their own interest.

Thus we perceive that the interior conduct of the Directory has the same characters with their exterior —the same irregular ambition, the same contempt of principle, the same boldness of design, the same temerity of execution. From such men what is not to be expected? The development of their recent conduct towards the United States will no doubt confirm all the inferences to be drawn from other parts of the portrait, and will contribute to prove that there is nothing too abandoned or too monstrous for them to meditate or attempt.

Who that loves his country, or respects the dignity of his nature, would not rather perish than subscribe to the prostration of both before such men and such a system? What sacrifice, what danger is too great to be incurred in opposition to both? What security in any compromise with such unprincipled men? What safety, but in union, in vigor, in preparation for every extremity; in a decisive and courageous stand for the rights and honor of our injured and insulted country?

TITUS MANLIUS.

V.

April 16, 1798.

To estimate properly the conduct of revolutionary France towards the United States, the circumstances which have reciprocally taken place must be viewed together. It is a *whole*, not a *part*, which is to be contemplated. A rapid summary, nevertheless, of the most material is all that can be presented.

Not only the unanimous good wishes of the citizens of this country spontaneously attached themselves to the revolution of France in its first stages, but no sooner was the change from monarchy to a republic officially announced, than our government, consulting the principles of our own revolution, and the wishes of our citizens, hastened to acknowledge the new order of things. This was done to the last minister sent by Louis the XVIth, before the arrival of the first envoy from the republic. Genet afterwards came; his reception by the government was cordial—by the people, enthusiastic.

The government did not merely receive the minister of the republic, in fact, and defer the obligation of treaties till the contest concerning its establishment had been terminated by success; but giving the utmost latitude to the maxim that real treaties bind nations, notwithstanding revolutions of government, ours did not hesitate to admit the immediate operation of the antecedent treaties between the two countries, though the revolution could not be regarded as yet fully accomplished—though a warrant for a contrary policy might have been found in the conduct of France herself—and though the treaties contained several stipulations which gave to her important preferences relative to war, and which were likely to give umbrage to the powers coalesced against her.

In acknowledging the republic, the United States preceded every other nation. It was not till a long time after, that any of the neutral powers followed the example. Had prudence been exclusively consulted, our government might not have done all that

it did at this juncture, when the case was very nearly Europe in arms against France.

But good faith and a regard to consistency of principle prevailed over the sense of danger. It was resolved to encounter it; qualifying the step by the manifestation of a disposition to observe a sincere neutrality, as far as should consist with the stipulations of treaty. Hence the proclamation of neutrality.

It ought to have no small merit in the eyes of France, that at so critical a period of her affairs, we were willing to run risks so imminent. The fact is, that it had nearly implicated us in the war on her side, at a juncture when all calculations were against her, and when it was certain she could have afforded us no protection or assistance.

What was the return? Genet came with neutrality on his lips, but war in his heart. The instructions published by himself, and his practice upon them, demonstrate that it was the premeditated plan to involve us in the contest; not by a candid appeal to the judgment, friendship, or interest of our country but by alluring the avarice of bad citizens into acts of predatory hostility, by instituting within our territory military expeditions against nations with whom we were at peace. And when it was found that our Executive would not connive at this insidious plan, bold attempts were made to create a schism between the people and the government, and, consequently, to sow the seeds of civil discord, insurrection, and revolution. Thus began the republic.

It is true that the Girondist faction, having been subverted by that of Robespierre, our complaint of

the agent of the former was attended with success. The spirit of vengeance came in aid of the justice of our demand. The offending minister was recalled with disgrace. But Robespierre did not fail in a public speech to give a gentle hint of delinquency in the United States, sufficiently indicating that the authors and the manner were more in fault, in his opinion, than the thing. It was not the expedient to quarrel with us. There was still a hope that a course of things, or more dexterous management, might embark us in the war, as an auxiliary to France.

The treaties were made by us the criterion of our duty; but as they did not require us to go to war, as France did never even pretend this to be the case, listening to the suggestions, not only of interest, but of safety, we resolved to endeavor to preserve peace. But we were equally resolved to fulfil our real obligations in every respect. We saw without murmur our property seized in belligerent vessels; we allowed to French ships of war and privateers, all the peculiar exclusive privileges in our ports to which they were entitled by our treaties upon fair construction—*upon a construction fully concurred in by the political leader** of the adherents to France; we went further, and gratuitously suffered her to sell her prizes in our country, in contravention, perhaps, of the true principles of neutrality; we paid to her new government the debt contracted by us with the old, not only as fast as it became due, but by an anticipation, which did not give pleasure to her enemies. While our government was faithful, our citizens were zealous.

* Mr. Jefferson.

Not content with good wishes, they adventured their property in the furnishing of supplies to an extent that showed, in many cases, the co-operation of zeal with interest.

Our country, our merchants, and our ships, in the gloomy periods of her revolution, have been the organs of succors to France, to a degree which gives us an undoubted title to the character of very useful friends.

Reverse the medal. France from the beginning, has violated essential points in the treaties between the two countries. The first formal unequivocal act by either of the belligerent parties, interfering with the rule that "*free ships make free goods*," was a decree of the French convention. This violation has been persisted in, and successive violations added, till they amount to a general war on our commerce.

First, the plea of necessity repelled our feeble and modest complaints of infractions. Next, the plea of delinquencies on our part was called in aid of the depredations which it was found convenient to practise upon our trade. Our refusal to accord privileges not granted by our treaties, but claimed by misconstructions destitute even of plausibility—privileges which would have put us at once in a state of war with the enemies of France; the reciprocal application to them of principles originally established against their remonstrances in favor of France; occasional embarrassments to her privateers, arising from the established forms of our courts, and the necessity of vigilance to frustrate her efforts to entangle us against our will in the war; delays in giving relief in a few

instances, rendered unavoidable by the nature of our government, and the great extent of our territory; these were so many topics of bitter accusation against our government, and of insult, as rude as it was unmerited.

Our citizens, in judging whether the accusation was captious or well founded, ought to bear in mind, that most of the transactions on which it was predicated happened under the administration of Jefferson and Randolph, and, as is well ascertained, with their full assent and co-operation. They will not readily suppose that these very cunning men were the dupes of colleagues actuated by ill-will towards France; but they will discover in this union of opinion, among men of very opposite principles, a strong probability that our government acted with propriety, and that the dissatisfaction of France, if more than a color, was unreasonable.

Hitherto, the progress no less than the origin of our controversy with France exhibits plain marks of a disposition on her part to disregard those provisions in the treaties which it was our interest should be observed by her—to exact from us a scrupulous performance of our engagements, and even the extension of them beyond their true import—to embroil us with her enemies, contrary to our inclination and interest, and without even the allegation of a claim upon our faith—to make unreasonable demands upon the grounds of complaints against us, and excuses to violate our property and rights—to divide our nation, and to disturb our government.

Many of the most determined advocates of France

among us appear lately to admit, that previous to the treaty with Great Britain the complaints of France against the United States were frivolous; those of the United States against France, real and serious.

But the treaty with Great Britain, it is affirmed, has changed the ground. This, it is said, has given just cause of discontent to France; this has brought us to the verge of war with our first ally and best friend; to this fatal instrument are we indebted for the evils we feel, and the still greater which impend over our heads.

These suggestions are without the shadow of foundation. They prove the infatuated devotion to a foreign power of those who invented them, and the easy credulity of those with whom they have obtained currency. The evidence of a previous disposition in France to complain without a cause, and to injure without provocation, is a sufficient comment upon the resentment she professes against the treaty. The partiality or indulgence with which the ill treatment received from her prior to that event was viewed by her decided partisans, is a proof of the facility with which they credit her pretensions and palliate her aggressions.

The most significant of the charges against the treaty, as it respects France, are, that it abandons the rule of free ships making free goods; that it extended unduly the list of contraband articles, and gave color to the claim of a right to subject provisions to seizure; that a treaty of amity with the enemy of France, in the midst of a war, was a mark of preference to that enemy, and of ill-will to her.

The replies which have been given to these charges are conclusive.

As to the first point, the stipulation of two powers to observe between themselves a particular rule in their respective wars—a rule, too, innovating upon the general law of nations—can, on no known or reasonable principle of interpretation, be construed to intend that they will insist upon that rule with all other nations, and will make no treaty with any, however beneficial in other respects, which does not comprehend it. To tie up the will of a nation, and its power of providing for its own interests, to so immense an extent, required a stipulation in positive terms. In vain shall we seek in the treaty for such a stipulation or its equivalent. There is not even a single expression to imply it. The idea is, consequently, no less ridiculous that it is novel. The contemporary proceedings, legislative and judicial, of our government, show that it was not so understood in this country. Congress even declined to become a formal party to the armed neutrality of which it was the basis; unwilling to be pledged for the coercive maintenance of a principle which they were only disposed to promote by particular acts. It is equally futile to seek to derive the obligation of the United States to adhere to this rule, from the supposition of a change in the law of nations by the force of that league. Neither theory nor practice warrants the attributing so important an effect to a military association, springing up in the war and ending with it, not having had the universal consent of nations, nor a course of long practice to give it a sanction.

Were it necessary to resort to an auxiliary argument, it might be said with conclusive force that France, having before our treaty with Great Britain violated in practice the rule in question, absolved us from all obligations to observe it, if any did previously exist.

As to the second point, it has been repeatedly demonstrated that the enumeration of contraband in the treaty with Great Britain, is agreeable to the *general* law of nations. But this is a matter from its nature liable to vary according to relative situation, and to be variously modified, not only between different nations, but between one nation and different nations. Thus, in our treaty with Great Britain, some articles are enumerated which are omitted in that with France; in that with France, some articles are inserted which are omitted in that with Britain. But it is, perhaps, the first time that a diversity of this sort has been deemed a ground of umbrage to a third party.

With regard to provisions, the treaty only decides that where by the law of nations they are subject to seizure, they are to be paid for. It does not define or admit any new case. As to its giving color to abuse in this respect, this, if true, would amount to nothing. For, till some abuse has actually happened, and been tolerated to the prejudice of France, there was no cause of complaint. The possibility of abuse from a doubtful construction of a treaty between two powers, is no subject of offence to a third. It is the fact which must govern. According to this indisputable criterion, France has had no cause to complain on this account; for since the ratification of the

treaty, no instance of the seizure of provisions has occurred, and it is known that our government protested against such a construction.

Further, the treaty has made no change whatever in the actual antecedent state of things to the disadvantage of France.

Great Britain had, before the treaty, with the sanction of our government, acted upon the principles as to free ships making free goods, and generally, as to the affair of contraband which the treaty recognizes. Nor was that sanction merely tacit, but explicit and direct. It was even diplomatically communicated to the agents of France. If there was any thing wrong, therefore, in this matter, it was chargeable, not upon the treaty, but upon the prior measures of the government, which had left these points mere points of form in the treaty.

The remaining charge against that instrument involves a species of political metaphysics. Neither the theory of writers nor the history of nations will bear out the position, that a treaty of amity between a neutral state and one belligerent party, not granting either succors or new privileges relative to war, not derogatory from any obligation of the neutral state to the other belligerent party, is a cause of umbrage to the latter. There can be no reason why a neutral power should not settle differences or adjust a plan of intercourse beneficial to itself with another power, because this last happens to be at war with a third. All this must be a mere question of courtesy; and might be uncourteous or otherwise according to circumstances, but never a ground of quarrel. If there

even might have been want of courtesy in the United States to have entered into a treaty of this sort with the enemy of France, had they volunteered it without cogent motives, there could be none in the particular situation. They were led to the treaty by pre-existing differences, which had nearly ripened to a rupture, and the amicable settlement of which affected very important interests. No favorable conjuncture for this settlement was to be lost. The settlement, by the usual formulas in such cases, would amount to a treaty of amity.

Thus it is evident that the treaty, like all the rest, has been a mere pretence for ill treatment. But admitting that this was not the case, that it really afforded some cause of displeasure, was this of a nature to admit of no atonement, or of none short of the humiliation of our country? If the contrary must be conceded, it is certain that our government has done all that was possible towards reconciliation, and enough to have satisfied any reasonable or just government.

France, after the treaty, proceeded to inflict still deeper wounds upon our commerce. She has endeavored to intercept and destroy it with all the ports of her enemies. Nor was this the worst. The spoliation has frequently attended our trade with her own dominions—attended with unparalleled circumstances of rapacity and violence.

The diplomatic representative of the French Government to the United States was ordered to deliver to our government a most insulting manifesto, and then to withdraw.

Yet our government, notwithstanding this accumulation of wrongs, after knowing that it had been repeatedly outraged in the person of one minister, condescended to send another specially charged to endeavor to conciliate. This minister was known to unite fidelity to his country with principles friendly to France and her revolution. It was hoped that the latter would make him acceptable, and that he would be able, by amicable explanations and overtures, to obviate misunderstanding and restore harmony. He was not received.

Though it was very problematical whether the honor of the United States, after this, permitted a further advance, yet the government, anxious if possible to preserve peace, concluded to make another and more solemn experiment. A new mission, confided to three extraordinary ministers, took place. They were all three, in different degrees, men well affected to France and her revolution. They were all men of high respectability, and among the purest characters of our country. Their powers and instructions were so ample as to have extorted, from the most determined opposers of the government in the two houses of Congress, a reluctant approbation in this instance of the President's conduct.

In contempt of the established usage, and of the respect due to us an independent people, with the deliberate design of humbling and mortifying our government, these special and extraordinary ministers have been refused to be received. Admitting all the charges brought against us by France to be well founded, still ministers of that description ought on

every principle to have been accredited and conferred with, till it was ascertained that they were not ready to do as much as was expected. Not to pursue this course was to deny us the rank of an independent nation; it was to treat us as Great Britain did while we were yet contending with her for this character.

Instead of this, informal agents, probably panders and mistresses, are appointed to intrigue with our envoys. These, attending only to the earnest wish of their constituents for peace, stoop to the conference. What is the misshapen result?

Money, money, is the burden of the discordant song of these foul birds of prey. Great indignation is at first professed against expressions in the President's speech of May last. The reparation of a disavowal is absolutely due to the honor of the Directory and of the Republic, but it turns out that there is a practicable substitute more valuable. The honor of both, being a marketable commodity, is ready to be commuted for gold.

A douceur of 50,000 pounds sterling for the special benefit of the Directory was to pave the way. Instead of reparation for the spoliations on our commerce exceeding twenty millions of dollars, a loan equal to the amount of them is to be made by us to the French Government. Then perhaps a mode might be settled for the liquidation of the claims of our merchants, to be compensated at some future period. The depredations, nevertheless, were to continue till the treaty should be concluded, which, from the distance between the two countries, must at all events take a great length of time, and might be procrastinated indefinitely at the pleasure of the Directory.

In addition to all this, we must purchase of the Directory, at par, Dutch inscriptions to the amount of thirty millions of florins, and look to the ability of the Batavian Republic to redeem them. Already are these assignats depreciated to half their nominal value, and in all probability will come to nothing, serving merely as a flimsy veil to the extortion of a further and immense contribution. "Money, a great deal of money,"* is the cry from the first to the last; and our commissioners are assured that without this they may stay in Paris six months without advancing a step. To enforce the argument they are reminded of the fate of Venice.

At so hideous a compound of corruption and extortion, at demands so exorbitant and degrading, there is not a spark of virtuous indignation in an American breast, which will not kindle into a flame. And yet there are men, could it be believed, vile and degenerate enough to run about the streets to contradict, to palliate, to justify, to preach the expediency of compliance. Such men merit all the detestation of all their fellow-citizens: and there is no doubt that, with time and opportunity, they will merit much more from the offended justice of the laws.

TITUS MANLIUS.

VI.

April 19, 1798.

The inevitable conclusion, from the facts which have been presented, is that revolutionary France has been and continues to be governed by a spirit of proselytism,

*Il faut de l'argent—il faut beaucoup de l'argent.

conquest, domination, and rapine. The detail well justifies the position that we may have to contend at our very doors for our independence and liberty. When the wonders achieved by the arms of France are duly considered, the possibility of the overthrow of Great Britain seems not to be chimerical. If, by any of those extraordinary coincidences of circumstances which occasionally decide the fate of empires, the meditated expedition against England shall succeed; or if, by the immense expense to which that country is driven, and the derangement of her commerce by the powerful means employed to that end, her affairs shall be thrown into such disorder as may enable France to dictate to her the terms of peace; in either of these unfortunate events the probability is, that the United States will have to choose between the surrender of their sovereignty, the new-modelling of their government according to the fancy of the Directory, the emptying of their wealth by contributions into the coffers of the greedy and insatiable monster, and resistance to invasion in order to compel submission to those ruinous conditions.

In opposition to this it is suggested that the interest of France, concurring with the difficulty of execution, is a safeguard against the enterprise. It is asked, what incentives sufficiently potent can stimulate to so unpromising an attempt? The answer is, the strongest passions of bad hearts—inordinate ambition—the love of domination, that prime characteristic of the despots of France,—the spirit of vengeance for the presumption of having thought and acted for ourselves, a spirit which has marked every step of the revolutionary

leaders,—the fanatical egotism of obliging the rest of the world to adapt their political system to the French standard of perfection—the desire of securing the future control of our affairs by humbling and ruining the independent supporters of their country, and of elevating the partisans and tools of France,—the desire of entangling our commerce with preferences and restrictions which would give to her the monopoly;—these passions, the most imperious,—these motives, the most enticing to a crooked policy, are sufficient persuasives to undertake the subjugation of this country.

Added to these primary inducements, the desire of finding an outlet for a part of the vast armies which, on the termination of the European war, are likely to perplex and endanger the men in power, would be an auxiliary motive of great force. The total loss of the troops sent would be no loss to France. Their cupidity would be readily excited to the undertaking by the prospect of dividing among themselves the fertile lands of this country. Great Britain once silenced, there would be no insuperable obstacle to the transportation. The divisions among us which have been urged to our commissioners as one motive to a compliance with the unreasonable demands of the Directory, would be equally an encouragement to invasion. It would be believed that a sufficient number would flock to the standard of France to render it easy to quell the resistance of the rest. Drunk with success, nothing would be thought too arduous to be accomplished.

It is too much a part of our temper to indulge an overweening security. At the close of our revolution war, the phantom of perpetual peace danced before the

eyes of everybody. We see at this early period with how much difficulty war has been parried, and that with all our efforts to preserve peace, we are now in a state of partial hostility. Untaught by this experience we now seem inclined to regard the idea of invasion as incredible, and to regulate our conduct by the belief of its improbability. Who would have thought, eighteen months ago, that Great Britain would at this time have been in serious danger of an invasion from France? Is it not now more probable that such a danger may overtake us, than it was then that it would so soon Great Britain?

There are currents in human affairs when events, at other times little less than miraculous, are to be considered as natural and simple. Such were the eras of Macedonian, of Roman, of Gothic, of Saracen inundation. Such is the present era of French fanaticism. Wise men, when they discover symptoms of a similar era, look for prodigies, and prepare for them with foresight and energy.

Admit that in our case invasion is upon the whole improbable; yet, if there are any circumstances which pronounce that the apprehension of it is not absolutely chimerical, it is the part of wisdom to act as if it were likely to happen. What are the inconveniences of preparation compared with the infinite magnitude of the evil if it shall surprise us unprepared? They are lighter than air, weighed against the smallest probability of so disastrous a result.

But what is to be done? Is it not wiser to compound on any terms than to provoke the consequences of resistance?

To do this is dishonor—it is ruin—it is death. Waiving other considerations, there can be no reliance on its efficacy. The example of Portugal teaches us that it is to purchase disgrace, not safety. The cravings of despotic rapacity may be appeased, but they are not to be satisfied. They will quickly renew their force, and call for new sacrifices in proportion to the facility with which the first were made. The situation of France is likely to make plunder for considerable time to come an indispensable expedient of government. Excluding the great considerations of public policy, and bringing the matter to the simple test of pecuniary calculation, resistance is to be preferred to submission. The surrender of our whole wealth would only procure respite, not safety. The disbursements for war will chiefly be at home. They will not necessarily carry away our riches, and they will preserve our honor and give us security.

But, in the event supposed, can we oppose with success? There is no event in which we may not look with confidence to a successful resistance. Though Great Britain should be impolitic or wicked enough (which is hoped to be impossible) to compromise her difficulties with France, to divide the United States according to the insulting threat of the agents of France, still it is in our power to maintain our independence and baffle every enemy. The people of the United States, from their number, situation, and resources, are invincible, if they are provident and faithful to themselves.

The question returns, What is to be done? Shall we declare war? No; there are still chances to avoid

a rupture, which ought to be taken. Want of success must bring the present despots to reason. Every day may produce a revolution which may substitute better men in their place, and lead to honorable accommodation.

Our true policy is, in the attitude of calm defiance, to meet the aggressions upon us by proportionate resistance, and to prepare vigorously for further resistance. To this end, the chief measures requisite are—to invigorate our treasury by calling into activity the principal untouched resources of revenue—to fortify in earnest our chief seaports—to establish founderies, and increase our arsenals—to create a respectable naval force, and to raise with the utmost diligence a considerable army. Our merchant vessels ought to be permitted not only to arm themselves, but to sink or capture their assailants. Our vessels of war ought to cruise on our coast and serve as convoys to our trade. In doing this, they ought also to be authorized not only to sink or capture assailants, but likewise to capture and bring in privateers found hovering within twenty leagues of our coast. For this last measure, precedent, if requisite, is to be found in the conduct of neutral powers on other occasions.

This course, it will be objected, implies a state of war. Let it be so. But it will be a limited, a mitigated state of war, to grow into a general war or not at the election of France. What may be that election will probably depend on future and incalculable events. The continuation of success on the part of France would insure war. The want of it might facilitate accommodation. There are examples in which states

have been for a long time in a state of partial hostility without proceeding to general rupture. The duration of this course of conduct on our part may be restricted to the continuance of the two last decrees of France: that by which the trade of neutrals with the ports of her enemies has been intercepted, and that by which vessels and their cargoes composed in whole or in part of British fabrics, are liable to seizure and condemnation.

The declared suspension of our treaties with France, is a measure of evident justice and necessity. It is the natural consequence of a total violation on one side. It would be preposterous to be fettered by treaties, which are wholly disregarded by the other party. It is essentially our interest to get rid of the guaranty in the treaty of alliance, which, on the part of France, is likely to be henceforth nugatory; on the part of the United States, is a substantial and dangerous stipulation, obliging them in good faith to take part with France in any future defensive war in which her West India colonies may be attacked. The consular convention is likewise a mischievous instrument, devised by France in the spirit of extending her influence into other countries, and producing to a certain extent *imperium in imperio.*

It may be happy for the United States that an occasion has been furnished by France in which with good faith they may break through these trammels; re-adjusting, when reconciliation shall take place, a basis of connection or intercourse more convenient and more eligible.

The resolution to raise an army, it is to be feared, is that one of the measures suggested which will meet

with the greatest obstacles, and yet it is the one which ought to unite opinion. Being merely a precaution for internal security, it can in no sense tend to provoke war; and looking to eventual security in a case which, if it should happen, would threaten our very existence as a nation, it is the most important.

The history of our revolution war is a serious admonition to it. The American cause had nearly been lost for want of creating, in the first instance, a solid force commensurate in duration with the war. Immense additional expense and waste and a variety of other evils were incurred, which might have been avoided.

Suppose an invasion, and that we are left to depend on militia alone, can it be doubted that a rapid and formidable progress would, in the first instance, be made by the invaders? Who can answer what dismay this might inspire, how far it might go to create general panic, to rally under the banners of the enemy the false and the timid? The imagination cannot, without alarm, anticipate the consequences. Prudence commands that they shall be guarded against. To have a good army on foot will be the best of all precautions to prevent, as well as to repel, invasion.

The propriety of the measure is so palpable that it will argue treachery or incapacity in our councils, if it be not adopted. The friends of the government owe it to their own characters to press it; its opposers can give no better proof that they are not abandoned to a foreign power, than to concur in it. The public safety will be more indebted to its advocates than to the advocates of any other measure, in proportion as our

independence and liberty are of more consequence than our trade.

It is the fervent wish of *patriotism* that our councils and nation may be united and resolute. The dearest interests call for it. A great public danger commands it. Every good man will rejoice to embrace the adversary of his former opinions, if he will now by candor and energy evince his attachment to his country. Whoever does not do this, consigns himself to irrevocable dishonor. But it is not the triumph over a political rival which the true lover of his country desires—it is the safety and the welfare of that country; and he will gladly share with his bitterest opponent the glory of defending and preserving her. Americans, rouse—be unanimous, be virtuous, be firm, exert your courage, trust in Heaven, and nobly defy the enemies both of *God* and *man!*

TITUS MANLIUS.

VII.

April 21, 1798.

The dispatches from our envoys have at length made their appearance.* They present a picture of the French Government exceeding in turpitude whatever was anticipated from the previous intimations of their contents. It was natural to expect that the perusal of them would have inspired a universal sentiment of indignation and disgust; and that no man calling himself an American would have had the hardihood to defend or even to palliate a conduct so atrocious. But it is already apparent that an expectation of this kind would not have been well founded.

* They were sent in to Congress April 3d.

There are strong symptoms that men in power in France understand better than ourselves the true character of their faction in this country, at least of its leaders; and that as to these, the agents who conferred with our envoys were not mistaken in predicting that the unreasonableness of the demands upon us would not serve to detach the party from France, or to reunite them to their own country. The high-priest of this sect, with a tender regard for the honor of the immaculate Directory, has already imagined several ingenious distinctions to rescue them from the odium and corruption unfolded by the dispatches. Among these is the suggestion that there is no proof of the privity of the Directory—all may have been the mere contrivance of the Minister for Foreign Relations.

The presumption from so miserable a subterfuge is, that had the propositions proceeded immediately from the Directory, the cry from the same quarter would have been—there is no evidence the council or nation approved of them; they, at least, are not implicated; the friendship of the two republics ought not to be disturbed on account of the villany of the transitory and fugitive organs of one of them. The inventor of the subterfuge, however, well knew that the executive organ of a nation never comes forward in person to negotiate with foreign ministers; and that unless it be presumed to direct and adopt what is done by its agents, it may always be sheltered from responsibility or blame. The recourse to so pitiful an invasion, betrays in its author a systematic design to excuse France at all events—to soften a spirit of submission to every violence she may commit—and to prepare the way for

implicit subjection to her will. To be the proconsul of a despotic Directory over the United States, degraded to the condition of a province, can alone be the criminal, the ignoble aim of so seditious, so prostitute a character.

The subaltern mercenaries go still further. Publications have appeared, endeavoring to justify or extenuate the demands upon our envoys, and to inculcate the slavish doctrine of compliance. The United States, it is said, are the aggressors, and ought to make atonement. France assisted them in their revolution with loans, and they ought to reciprocate the benefit; peace is a boon worth the price required for it, and it ought to be paid. In this motley form our country is urged to sink, voluntarily and without a struggle, to a state of tributary vassalage. Americans are found audacious and mean enough to join in the chorus of a foreign nation, which calls upon us to barter our independence for a respite from the lash.

The charge of aggression upon the United States is false; and if true, the reparation, from the nature of the case, ought not to be pecuniary. This species of indemnification between nations is only proper where there has been pecuniary injury.

The loans received by us from France were asked as a favor, on condition of reimbursement by the United States; and were freely granted for a purpose of mutual advantage. The advances to be made by us were exacted as the price of peace. Though in name loans, they would be in fact contributions, by the coercion of a power which has already wrested from our citizens an immense property, for which it owes to them compensation.

To pay such a price for peace, is to prefer peace to independence, and the nation which becomes tributary takes a master.* Peace is doubtless precious, but it is a bauble compared with national independence, which includes national liberty. The evils of war to resist such a precedent are insignificant, compared with the evils of the precedent. Besides that, there could be no possible security for the enjoyment of the object for which the disgraceful sacrifice was made. To disguise the poison, misrepresentation is combined with sophistry. It is alleged that finally no more was asked than that the United States should purchase sixteen millions of Dutch inscriptions, and that by doing this, they would have secured compensation to their citizens for depredations on their trade to four times the amount, with an intermission of the depredations; that no hazard of ultimate loss could have attended the operation, because the United States owed the Dutch a much larger sum, which would be a pledge for payment or discount.

This is a palpable attempt to deceive. The first propositions were such as have been represented in a former paper; but it appears in the sequel that the French agents, seeing the inflexible opposition of our envoys to their plan, and hoping to extort finally a considerable sum, though less than at first contemplated, relaxed so far in their demands, as to narrow

* The argument of what has been done in the cases of Algerines and Indians, has nothing pertinent but in the comparison of relative ferocity. In this view the claim of the Directory is indisputable; but in every other it is preposterous. It is the general practice of civilized nations to pay barbarians; there is no point of honor to the contrary. But between civilized nations, the payment of tribute by one to another, is, by the common opinion of mankind, a badge of servitude.

them down to the payment of a douceur of twelve hundred thousand livres, with a positive engagement to advance to the French Government a sum equal to the amount of the spoliations of our trade, and a further engagement to send to our government for power to purchase of France thirty-two millions of the inscriptions (12,800,000 dollars); in return for all which, our envoys were to be permitted to remain six months in Paris, depredations on our trade during that time were to be suspended, and a commission of five persons was to be appointed to liquidate the claims for past depredations, which were to be satisfied "in a *time* and *manner* to be agreed upon." The substance of these demands is to pay absolutely twenty millions of dollars more than the estimated amount of the spoliations; for what? Barely for the acknowledgment of a debt due to our citizens, which, without it, is not the less due, and for the suspension of *hostilities** for six months.

Afterwards, in a conversation between the French minister himself and one of our envoys, the propositions assumed another form. The United States were required to purchase of France, at par, sixteen millions of inscriptions, *and to promise further aid when in their power*. This arrangement being first made, and not before, France was to take measures for reimbursing the equitable demands of our citizens on account of captures.

The purchase of the inscriptions was to be a preliminary. The arrangement for reimbursing our merchants

* It is observable that the French give themselves the denomination of *hostilities* to their depredations upon us. Our Jacobins would have us consider them as gentle caresses.

was to follow. The nature of it was not explained; but it is to be inferred from all that preceded that the expedient of the advance of an equal sum by the United States would have been pressed as the basis of the promised arrangement. This last proposal was in its principle as bad as either of the former; its tendency, worse. The promise of future assistance would have carried with it the privilege to repeat at pleasure the demand of money, and to dispute with us about our ability to supply; and it would have embarked us as an *associate* with France in the war. It was to promise her the most effectual aid in our power, and that of which she stood most in need.

The scheme of concealment was a trick. The interest of France to engage us in the war against Great Britain, as a means of wounding her commerce, is too strong to have permitted the secret to be kept by her. By the ratification of the treaty, in which the Senate must have concurred, too many would have obtained possession of the secret to allow it to remain one. While it did, the apprehension of discovery would have enabled France to use it as an engine of unlimited extortion. But a still greater objection is, that it would have been infamous in the United States thus covertly to relinquish their neutrality, and with equal cowardice and hypocrisy to wear the mask of it, when they had renounced the reality.

The idea of securing our advances, by means of the debt which we owe to the Dutch, is without foundation. The creditors of the United States are the *private citizens* of the Batavian Republic. Their demands could not be opposed by a claim of our government upon

their government. The only shape in which it could be attempted must be in that of reprisals for the delinquency of the government. But this would not only be a gross violation of the principle, it would be contrary to *express* stipulations in the contracts for the loans.*

In the same spirit of deception it has also been alleged that our envoys, by giving the douceur of twelve hundred thousand livres, and agreeing to send for powers to make a loan, might have obtained a suspension of depredations for six months. There is not a syllable in the dispatches to countenance this assertion. A large advance in addition, either on the basis of the spoliations, or by way of purchase of the inscriptions, is uniformly made the condition of suspending hostilities.

Glosses so false and insidious as these, in a crisis of such imminent public danger, to mislead the opinion of our nation concerning the conduct and views of a foreign enemy, are shoots from a pernicious trunk.

Opportunity alone is wanting to unveil the treason which lurks at the core.

What signifies the quantum of the contribution had it been really as unimportant as it is represented? 'T is the principle which is to be resisted at every hazard. 'T is the pretension to make us tributary, in opposition to which every American ought to resign the last drop of his blood.

The pratings of the Gallic faction at this time remind us of those of the British faction at the commencement of our revolution.

The insignificance of a duty of three pence per

* They all provide against seizure or sequestration by way of reprisals, etc.

pound on tea was echoed and re-echoed as the bait to an admission of the right to bind us in all cases whatsoever.

The tools of France incessantly clamor against the treaty with Britain as the just cause of the resentment of France. It is curious to remark, that in the conferences with our envoys this treaty was never once mentioned by the French agents. Particular passages in the speech of the President are alone specified as a ground of dissatisfaction. This is at once a specimen of the fruitful versatility with which causes of complaint are contrived, and of the very slight foundations on which they are adopted. A temperate expression of sensibility at an outrageous indignity, offered to our government by a member of the Directory, is converted into a mortal offence. The tyrants will not endure a murmur at the blows they inflict. But the dispatches of our envoys, while they do not sanction the charge preferred by the Gallic faction against the treaty, confirm a very serious charge which the friends of the government bring against that faction. They prove by the unreserved confession of her agents, that France places absolute dependence on this party in every event, and counts upon their devotion to her as an encouragement to the conditions which they attempt to impose. The people of this country must be infatuated indeed, if after this plain confession they are at a loss for the true source of the evils they suffered, or may hereafter suffer from the despots of France, 'T is the unnatural league of a portion of our citizens with the oppressors of their country.

TITUS MANLIUS.

DETECTOR.*

1798.

Every day brings fresh confirmations of the truth of the prediction to our envoys that the French faction in America would go all lengths with their imperious and unprincipled masters. It is more and more evident that as many of them as may dare will join the standard of France if once erected in this country. After all that has happened, there is no other solution of the indefatigable and malignant exertions which they are making to propagate disaffection to our own government, and to justify or extenuate the conduct of France. The authors of these exertions understand too well the human heart not to know, that ideas which have once taken deep root in a community, and have enlisted its passions against one object and in favor of another, cannot suddenly be changed; and that in the event of an invasion they could not, if so disposed, prevent their followers from acting in conformity with the strong bias which had been previously given to their feelings. They know this so well that if they were not in their hearts more *Frenchmen* than *Americans;* if they were not ready in the gratification of ambition, vanity, or revenge, or in compliance with the wages of corruption, to immolate the independence and welfare of their country at the shrine of France * * * they would not, as they do, pursue a conduct which they cannot be insensible leads to that fatal result. Their pride, if not their patriotism, would prevent them. Openly claimed

* This paper, now first printed from the Hamilton MSS. (Vol. XV., p 101), is an elaborate examination of the X. Y. Z. correspondence. It is in the same line as the preceding essays of "The Stand," and must have followed them closely in point of time."

by a foreign government as its obsequious tools, the jealousy of their own honor would prompt them to be forward in giving the lie to a claim to them so pregnant with ignominy. That this has not been the effect, is a convincing proof that they have embarked beyond the power of retreat. It affords a presumption that they are in a situation which leaves them no longer wills of their own. It is astonishing to observe, that they not only do not contradict the charge by their actions, but seem little, if at all, solicitous to disavow it in their language. And in the measures which they advocate, with an effrontery unequalled, under similar circumstances, in the history of any nation, they display unequivocally their prostitute devotion to the enemies of their country.

A principal expedient employed by these men to second the views of the French Government, and counteract the salutary impressions on the public mind, which its abominable treatment of us is calculated to produce, is to inculcate that our envoys, in the conferences they have communicated, have been the dupes of unauthorized and swindling impostors, and that our government, in publishing these dispatches, has been actuated by a desire to make the circumstance subservient to a long premeditated design of rupture with France.

The French account of a transaction in which the despots of France have violated a right of nations sacred among savages as well as civilized men, by imprisoning the Ambassador of Portugal, is pressed into the service of the infamous scheme of defaming our own government and vindicating those despots. This

account represents the Portuguese Minister as having been deceived into the advance of a large sum of money, as a bribe to three of the Directory, by pretended agents of the French Government, which, coming to light through the channel of the French Minister at the Court of Portugal, occasioned the imprisonment of the Portuguese Ambassador and several of the pretended agents. And it is alleged that a like imposition has, in all probability, been practised upon our envoys.

What may appear to be the real nature of the transaction in question can only be judged of when the Portuguese Government, free from the dread of France, shall have told its story; when, if ever, the imprisoned Minister shall be at liberty to explain the grounds of the confidence which he reposed in the agents to whom the money was advanced. Till then all judgment of the true complexion of the affair must be suspended.

In the meantime the character of bold iniquity which the Directory have so eminently earned, authorizes the supposition that the agents now disavowed were really agents of the government—that they actually received the bribe for the Directory; that these, deeming it expedient afterwards to disappoint the expectation given to Portugal, found it necessary to disclaim the inducement, and as a color to their ill-faith, and a shield against the infamy of the proceeding, to imprison the Minister and the inferior agents. The present rulers of France have soared to so stupendous a height of profligacy that the diminutive vices of other men afford no standard by which to judge of their conduct—no clue to the mysterious labyrinth of their complicated crimes.

There are even circumstances to countenance the supposition of this double plot. It is stated that Wascowitch, one of the persons disavowed and seized, was apparently in close connection with *Beaumarchais*; was in "*ostensible familiarity with government men*," and had actually had communication with a *real agent of government for the purpose of discovering the views of newly-arrived foreign envoys*. And it appears that *Beaumarchais* is not among the persons seized.

It may serve as an index to the affair to understand that *Beaumarchais* is one of the most cunning and intriguing men of Europe; that he was employed under the royal government as a secret confidential agent, in which capacity he acted between the United States and France, before the acknowledgment of our independence, and that he is known to be in intimate connection with the present French Minister for Foreign Relations.

In the capacity of confidential agent a considerable part of the monies advanced by France for the use of the United States passed through his hands. There was a sum of a million of livres which Dr. Franklin, in the carelessness of confidence, acknowledged to have been received, of which the application could not be traced. When inquiry on behalf of our government was made of the French Minister concerning the appropriation of this million, the only answer to be obtained was that it was a "*secret du cabinet*." But the Revolution has unravelled this secret. During the reign of Robespierre, *Beaumarchais* was in disgrace and a fugitive. The ministry of that period, not scrupling to unveil the corruptions of the old government,

charged the receipt of the missing million upon *Beaumarchais*, and furnished a copy of *the receipt which he is alleged to have given for it.*

This transaction proves that *Beaumarchais*, besides being the confidential political agent of the then administration of France, was the instrument or accomplice of its cupidity. What but the participation of the Minister in a scheme of embezzlement could have induced him to make a *cabinet secret* of the application of this million?

Who a more likely, a more fit instrument of the avidity of the present government than this same *Beaumarchais?* When men apparently in close connection with him take bribes from foreign ministers, professedly for the use of the Directory, what more probable than that they are truly for that use—that *Beaumarchais* is the link between the Directory and the ostensible agents?

If afterwards expedient or necessary to disavow, what more easy to be managed? *Beaumarchais* is no doubt too adroit to transact such business in a manner that can admit of proof of his agency. If inculpated by his agents he has only boldly to deny the charge and to treat it as a part of the imposture. The all-sufficient patronage of the Directory could not fail to ensure credit to his denial and to shield him from detection.

In such a case the appearances to be expected are exactly such as occur in the present affair. The immediate and chief agent goes untouched. The subalterns are consigned to punishment, real or *seeming*. The semblance of punishment may even be a thing

understood all round. As yet nothing more than imprisonment is known to have taken place; and it is very possible that final impunity may attend *Wascowitch* and his colleagues; though from the character of the *Directory*, if necessary to their purposes, they would find no difficulty in the sacrifice of these men, by hurrying them to the guillotine after a mock-trial, or by giving them, like *Carnot*, a secret passport to the other world.

If it be true, as we are told, that France has suspended the project of invading Portugal, and is in negotiation with her under the auspices of Spain, it is very possible that the precautions of the Portuguese Minister to establish the participation of the Directory were better than was at first suspected, and that the apprehension of having the affair seriously probed may obtain for Portugal a suspension from Ruin.

This comment upon the affair is justified by the facts *ascertained* in our case. The participation of the French Minister for Foreign Relations in the propositions of the secret agents to our envoys admits of no question. To be convinced of these we have only to compare the declarations and proposals of the agents with those of the Minister himself.

In the communications of those agents the leading ideas are that the Directory were greatly incensed at some passages in the *President's speech;* that *reparation* must be made for them; that money *might be a substitute* for other reparation; that this money was *to be offered* by our envoys, and to serve as *pocket-money*, as a *gratuity*, for the Directory; and that in addition to it there must be a loan to *the republic*, in the shape of

purchase of Dutch rescriptions, or in some other shape. The gratuity to be about £50,000 sterling.

The same ideas substantially appear in the conference with Talleyrand himself.

As a criterion of this it is in the first place to be observed that these agents originally suggested the *bribe* or *gratuity*, contradistinguished from the *loan*, as a *substitute* for other *reparation* to the Directory for a pretended insult in the President's speech. In the conference between the Minister *Talleyrand* and one of our envoys of the 28th of October, the same idea is distinctly marked; so as to evince a concert* not only in substance but in circumstances between the Minister and the agents. They began their conferences by stating the umbrage taken by the Directory at the President's speech, the necessity of reparation for it, and the possibility of commuting that reparation for money *to be offered* by our envoys. The Minister, treading in their steps, began the conference† by observing that the Directory had passed an *arrêt*, in which they had demanded of the envoys an *explanation* of some parts and *reparation* for other parts of the President's speech to Congress; that he was sensible difficulties would exist on the part of the envoys relative to this demand, but that by *their offering money* he thought he could prevent the effect of the *arrêt*.

The characteristic features in both cases are—*offence* given by the speech, *reparation* to be demanded by the Directory, and a *commutation* of the required reparation for *money*. The only difference is that

*See Exhibit C., Dec. 13th.

†See dispatch commencing the 27th of October, 1797.

the agents call this *pocket-money* for the Directory a gratuity, etc., while the Minister gives it no specific name or designation. But we discover still more clearly from what follows that he means the same thing with the agents. The envoy having answered that he and his colleagues had no power to make a loan, but could send one of their number for instructions on the proposition, if deemed expedient, provided that the other objects of the negotiation could be discussed and adjusted, Talleyrand replied that this matter *about the money* might be settled *directly without sending to America;* that he would not communicate the *arrêt* for a week, and that if the envoys could adjust the difficulty with respect to the *speech* an application would nevertheless go to the United States for *a loan.* The loan is here manifestly a different thing from the money to be advanced for reparation. The last might be arranged immediately, though the first might wait the issue of an application to the government of this country. The first is plainly the 50,000 sterling for *pocket-money;* the last is the contribution by way of loan to the republic. This coincidence fixes definitively the concert between the Minister and the agents, and traces unequivocally to the former the double demand of a *bribe* and a *loan.* The conclusion is inevitable.

It is also confirmed by what took place on the 17th of December, when one of our envoys mentioned to the Minister that the person designated as *Y* had that morning made him *propositions* (alluding to those for the *gratuity* and *loan*). The Minister replied that the *information which Y had given was just, and might*

always be relied upon. This was explicitly to recognize *Y* as his agent and to authorize the giving of credit to his propositions. A quibble has been started on this point. It is pretended that the declaration that the information given by *Y* was just, did not import that the *propositions* he had made were authorized. But besides that it was natural to look for vagueness of expression in so mysterious and so foul a transaction, —as the term *information* was used in reply to the suggestion that *propositions* had been made, it must necessarily be understood and intend that the *information* which *Y* had given, in reference to the *propositions* spoken of by the envoy, was just and might be relied upon. Again, *information* was the most apt term that could have been employed. *Y* and the other agents professed not to *make propositions*, but to *inform* our envoys what *propositions made by them* were likely to be acceptable.

Such are the wretched shifts to which the factious adherents of France are driven in the attempts to obscure the truth and to mislead their countrymen. Their futility is evident. It is evident that the agents who conferred with our envoys were not impostors but were truly the commissaries of the French minister, and that their most odious propositions were not only sanctioned but even *reiterated* by him. The connection between the Minister and the Directory, from the nature of the thing, can only be inferred from his office and from his personal character. The most circumspect man in the world, it is utterly incredible that he would hazard himself in such a way unless, acting for the Directory, he was assured of their omnipotent support.

Whether he be himself a mercenary partaker of the bribes which are extorted, or only the instrument of the rapacity of the Directory to retain his influence with them for the accomplishment of some great ulterior design, must be referred to time, and is of little moment to the United States.

Whatever, then, may have been the case with respect to the Portuguese Minister, 't is demonstrated that our envoys have not been, as alleged, the dupes of unauthorized agents, but have had the dexterity to ascertain the conception and expression from the mouth of the Minister himself. The probability is that in the other instance likewise the corruption which is now denied did really exist, as it most certainly does in our case; though it is to be looked for that here also it will be denied, and our envoys, if within the grasp of the monsters, made the victims of their fraudulent tyranny. The abject partisans of France, anticipating this result, are preparing the way for its justification.

DETECTOR.

A FRENCH FACTION.

1798.

There is a set of men whose mouths are always full of the phrases, British faction—British agents—British influence. Feeling that they themselves are interested in a foreign faction, they imagine that it must be so with every one else, and that whoever will not join with them in sacrificing the interests of their country to another country, must be engaged in an opposite foreign faction; *Frenchmen* in all their feelings and wishes, they can see in their opponents nothing but

Englishmen. Every true *American*—every really independent man, becomes, in their eyes, a British agent—a British emissary.

The truth is, that there is in this country a decided *French faction*, but no other foreign faction. I speak as to those who have a share in the public councils, or in the political influence of the country; those who adhered to Great Britain during the revolution may be presumed, generally, to have still a partiality for her. But the number of those who have at this time any agency in public affairs is very insignificant. They are neither numerous nor weighty enough to form in the public councils a distinct faction. Nor is it to this description of men that the passage is applied.

The satellites of France have the audacity to bestow it upon men who have risked more in opposition to Great Britain, than but few of them ever did—to men who have given every possible proof of their exclusive devotion to the interests of their own country. Let facts speak. The leaders of the French faction during the war managed to place the minister of the country abroad in a servile dependence on the ministry of France, and but for the virtuous independence of those men, which led them to break their instructions, it is very problematical we should have had as early, or as good a peace as that we obtained. The same men, during the same period, effected the revocation of a commission which had been given for making a commercial treaty with Great Britain, and again, on the approach of peace, defeated an attempt to produce a renewal of that commission, and thus lost an opportunity known to have been favorable for establishing a

beneficial treaty of commerce with that country—though they have since made the obtaining of such a treaty, a pretext for reiterated attempts to renew hostilities with her. The same men have been constantly laboring, from the first institution of the present government, to render it subservient, not to the advancement of our own manufactures, but to the advancement of the navigation and manufactures of France.

In a proposal which aims at fostering our own navigation and elevating our own manufactures, by giving them advantages over those *of all foreign nations*, a thousand obstacles occur, a thousand alarms are sounded—usurpation of ungranted powers, designs to promote the interests of different parts of the Union at the expense of the other parts of it, and innumerable other spectres are conjured up to terrify us from the pursuit. Is the project to confer particular favors upon the navigation and manufactures of France, even at the expense of the United States?—then all difficulties vanish. This is the true and only object of the Constitution—for this it was framed—by this alone it can live and have a being. To this precious end, we are assured, the States who may particularly suffer will be willing to sacrifice. In this holy cause we are to risk every thing—our trade, our navigation, our manufactures, our agriculture, our revenues, our peace. Not to consent is to want spirit—to want honor—to want patriotism. Thus does Gallicism assume the honorable part of patriotism.

THE WAR IN EUROPE.

1799.

Every step of the progress of the present war in Europe has been marked with horrors. If the perpetration of them was confined to those who are the acknowledged instruments of despotic power, it would excite less surprise; but when they are acted upon by those who profess themselves to be the champions of the rights of man, they naturally occasion both wonder and regret. Passing by the extreme severities which the French have exercised in Italy, what shall we think of the declarations of Jourdan to the inhabitants of Germany.

* * * * * *

Good God! is it a crime for men to defend their own government and country? Is it a punishable offence in the Germans that they will not accept from the French what they offer as liberty at the point of the bayonet? This is to confound all ideas of morality and humanity; it is to trample upon all the rights of man and nations; it is to restore the ages of barbarism, according to the laws and practice of modern war; the peasantry of a country, if they remain peaceably at home, are protected from other harm than a contribution to the necessities of the invading army. Those who join the armies of their country and fight with them, are considered and treated as *other soldiers*. But the present French doctrine is, that they are to be treated as *rebels* and *criminals*.

German *patriotism* is a heinous offence in the eyes of French patriots. How are we to solve this otherwise than by observing that the French are influenced

by the same spirit of domination which governed the ancient Romans. They considered themselves as having a right to be the masters of the world, and to treat the rest of mankind as their vassals. How clearly is it proved by this that the praise of a civilized world is justly due to Christianity;—war, by the influence of the humane principles of that religion, has been stripped of half its horrors. The *French* renounce Christianity, and they relapse into barbarism;—war resumes the same hideous and savage form which it wore in the ages of Gothic and Roman violence.

ALLEGORICAL DEVICE.

1799.

A globe, with Europe and part of Africa on one side, America on the other, the Atlantic between. The portion occupied by America to be larger than that occupied by Europe. A Colossus to be placed on this globe, with one foot on Europe, the other extending partly over the Atlantic toward America; having on his head a quintuple crown, in his right hand an iron sceptre, projecting, but broken in the middle; in his left hand a *pileus* (cap of liberty) reversed; the staff entwined by a snake with its head downward, having the staff of the *pileus* in its mouth, and folding in its tail (as if in the act of strangling) a label with the words "Rights of Man." Upon a base supported by fifteen columns erected on the continent of America, the genius of America to be placed, represented by the figure of *Pallas*—a female in armor, with a firm, composed countenance, a golden breastplate, a spear in

her right hand, and an ægis or shield in her left, having upon it the scales of justice (instead of the Medusa's head); her helmet encircled with wreaths of olive, her spear striking upon the sceptre of the Colossus and breaking it asunder; over her head a radiated crown of glory. It would improve the allegory to represent the Atlantic in a tempest, as indicative of rage, and Neptune in the position of aiming a blow at the Colossus with his trident.

Explanation.—It is known that the globe is an ancient symbol of universal dominion. This, with the Colossus, alluding to the French Directory, will denote the project of acquiring such dominion—the position of the Colossus signifying the intent to extend it to America. The Colossus will represent the French Republic; and *Pallas*, as the genius of America, will intimate that though loving peace as a primary object (of which the olive-wreath is the symbol), yet, guided by *wisdom* and justice, America successfully exerts her valor to break the sceptre of the tyrant.

PERICLES.*

(For the *Evening Post.*)

1803.

Since the question of independence, none has occurred more deeply interesting to the United States than the cession of Louisiana to France.

This event threatens the early dismemberment of a

* Reprinted from the "History of the Republic," by John C. Hamilton, and now first included with Hamilton's writings.

It is a very interesting paper, as it shows how completely Hamilton parted with his party on the Louisiana question and how unswervingly national he was in every thing.

large portion of the country; more immediately, the safety of all the Southern States; and remotely, the independence of the whole Union. This is the portentous aspect which the affair presents to all men of sound and reflecting minds, of whatever party; and it is not to be concealed, that the only question which now offers itself, is how the evil is to be averted?

The strict right to resort at once to war, if it should be deemed expedient, cannot be doubted. A manifest and great danger to the nation; the nature of the cession to France, extending to ancient limits without respect to our rights by treaty; the direct infraction of an important article of the treaty itself, in withholding the deposit of New Orleans: either of these affords justifiable cause of war, and that they would authorize immediate hostilities, is not to be questioned by the most scrupulous mind.

The whole is then a question of expediency. Two courses only present: First, to negotiate, and endeavor to purchase; and if this fails, to go to war. Secondly, to seize at once on the Floridas and New Orleans, and then negotiate. A strong objection offers itself to the first. There is not the most distant probability that the ambitious and aggrandizing views of Buonaparte will commute the territory for money. Its acquisition is of immense importance to France, and has long been an object of her extreme solicitude. The attempt, therefore, to purchase, in the first instance, will certainly fail; and in the end, war must be resorted to, under all the accumulation of difficulties caused by a previous and strongly fortified possession of the country by our adversary.

The second plan is, therefore, evidently the best. First, because effectual; the acquisition easy; the preservation afterwards easy. The evils of a war with France at this time are certainly not very formidable: her fleet crippled and powerless; her treasury empty; her resources almost dried up; in short, gasping for breath after a tremendous conflict, which, though it left her victorious, left her nearly exhausted under her extraordinary exertions. On the other hand, we might count with certainty on the aid of Great Britain with her powerful navy.

Secondly, this plan is preferable, because it affords us the only chance of avoiding a long-continued war. When we have once taken possession the business will present itself to France in a new aspect. She will then have to weigh the immense difficulties, if not the utter impracticability, of wresting it from us. In this posture of affairs she will naturally conclude it is her interest to bargain. Now it may become expedient to terminate hostilities by a purchase, and a cheaper one may reasonably be expected. To secure the better prospect of final success, the following auxiliary measures ought to be adopted. The army should be increased to ten thousand men, for the purpose of insuring the preservation of the conquest. Preparations for increasing our naval force should be made. The militia should be classed, and effectual provision made for raising, on an emergency, forty thousand men. Negotiations should be pushed with Great Britain, to induce her to hold herself in readiness to co-operate fully with us, at a moment's warning. This plan should be adopted and proclaimed before the

departure of our envoy. Such measures would astonish and disconcert Buonaparte himself; our envoy would be enabled to speak and treat with effect, and all Europe would be taught to respect us. These ideas have been long entertained by the writer, but he has never given himself the trouble to commit them to the public, because he despaired of their being adopted. They are now thrown out with very little hope of their producing any change in the conduct of the Administration, yet with the encouragement that there is a strong current of public feeling in favor of decisive measures. If the President would adopt this course, he might yet retrieve his character, induce the best part of the community to look favorably upon his political career, exalt himself in the eyes of Europe, save the country, and secure a permanent fame. But, for this, alas! Jefferson is not destined.

PERICLES.

THE WHISKEY REBELLION.

THE WHISKEY REBELLION.

HAMILTON TO WASHINGTON.*

TREASURY DEPARTMENT, September 1, 1792.

SIR:—I have the honor to inclose sundry papers which have been handed to me by the Commissioners of the

* This letter, and those which follow, give the history of the whiskey rebellion from the point of view of the Secretary of the Treasury. That first insurrection against the government is an important chapter in the life of Hamilton. It was his system narrowly victorious at the last point which caused the assumption of the State debts as a part of the general financial policy. It was the assumption of the State debts which made an increase of taxation necessary, and for this purpose the excise on spirits was laid. The new tax produced an outburst of resistance in the Alleghany region—that is, in Western Pennsylvania, Virginia, and North Carolina. By the efforts of Washington, and by modifying the law almost to the verge of imprudent concession, the disturbances in Virginia and North Carolina were allayed. But in Pennsylvania matters went from bad to worse, until resistance culminated in open rebellion. Judging in accordance with the best principles of taxation, no one would now question the propriety of the excise. But when the opposition to it became revolt, the affair rose in Hamilton's eyes to something far graver than the successful collection of a certain amount of money. He felt that it was the first sharp test of the value and strength of the government formed under the Constitution, and he knew that if the government prevailed, it would be greatly invigorated. When Washington was satisfied that conciliation had been tried to the last point consistent with safety, he adopted Hamilton's measures, ordered out an overwhelming force, and sent it against the insurgents. Before this display of energy and vigor the insurrection faded away without bloodshed into ignominy and ridicule. The result was most valuable. There had been a struggle of principles and parties, and the Federal Government had conquered. In the following pages, containing all that Hamilton wrote on the subject, the story of this incident, so important and so full of meaning to our early development as a nation, is told by the principal actor on the side of the Administration.

Revenue, respecting the state of the excise law in the Western Survey of the District of Pennsylvania.

Such persevering and violent opposition to the law gives the business a still more serious aspect than it has hitherto worn, and seems to call for vigorous and decisive measures on the part of the government.

I have directed that the supervisor of the district shall repair forthwith to the survey in question, to ascertain in person the true state of the survey; to collect evidences respecting the violences that have been committed, in order to a prosecution of the offenders; to ascertain particulars as to the meeting which appears to have been held at Pittsburgh; to encourage the perseverance of the officers; giving expectations, as far as it can be done with propriety, of indemnification from the government for any losses which they may sustain in consequence of their offices; to endeavor to prevail upon the inhabitants of the county of Alleghany, who appear at present the least refractory, to come into an acquiescence of the law; representing to discreet persons the impropriety of government's remaining a passive spectator of the contempt of its laws.

I shall also immediately submit to the Attorney-General, for his opinion, whether an indictable offence has not been committed by the persons who were assembled at Pittsburgh, and of what nature is the paper which contains their proceedings; with a view, if judged expedient by you, that it may be brought under the notice of the Circuit Court, which, I understand, is to be held in October at Yorktown.

My present clear conviction is, that it is indis-

pensable, if competent evidence can be obtained, to exert the full force of the law against the offenders, with every circumstance that can manifest the determination of government to enforce its execution; and if the processes of the courts are resisted, as is rather to be expected, to employ those means which in the last resort are put in the power of the Executive. If this is not done, the spirit of disobedience will naturally extend, and the authority of the government will be prostrated. Moderation enough has been shown; it is time to assume a different tone. The well-disposed part of the community will begin to think the Executive wanting in decision and vigor. I submit these impressions to your consideration, previous to any step which will involve the necessity of ulterior proceedings; and shall hope as speedily as possible to receive your instructions.

With the highest respect and the truest attachment, I have the honor to be, etc.

HAMILTON TO WASHINGTON.

TREASURY DEPARTMENT, September 8, 1792.

SIR:—I have to acknowledge the honor of your letter of the 31st of August.

Letters from the supervisor of North Carolina confirm the representation contained in the letter from the inspector of the 5th survey to you. My letter which accompanies this, suggests the measure which, on mature reflection, has appeared most proper to be taken upon the whole subject of the opposition to the law. If the idea is approved by you, I believe it will

be advisable to transmit a copy of the proclamation to the governors of each of the States of South Carolina, North Carolina, and Pennsylvania, calling their attention in a proper manner to the state of affairs within their respective governments.

HAMILTON TO WASHINGTON.

TREASURY DEPARTMENT, September 9, 1792.

SIR :—I had the honor of writing to you by the post of Monday last, and then transmitted sundry papers, respecting a meeting at Pittsburgh on the 21st of August, and other proceedings of a disorderly nature in opposition to the laws laying a duty on distilled spirits, and I added my opinion that it was advisable for the government to take measures for suppressing these disorders and enforcing the laws with vigor and decision.

The result of further and mature deliberation is, that it will be expedient for the President to issue a proclamation adverting in general terms to the irregular proceedings, and manifesting an intention to put the laws in force against offenders. The inducements to this measure are:

1. That it is a usual course in like cases, and seems, all circumstances considered, requisite to the justification of the Executive Department. It is now more than fourteen months since the duty in question began to operate. In the four western counties of Pennsylvania, and in a great part of North Carolina, it has never been in any degree submitted to. And the late meeting at Pittsburgh is, in substance, a repetition of

what happened last year in the same scene. The disorders in that quarter acquire additional consequence from their being acted in the State which is the immediate seat of government. Hence the occasion appears to be sufficiently serious and of sufficient importance to call for such a procedure.

2. As an accommodating and temporizing conduct has been hitherto pursued, a proclamation seems to be the natural prelude to a different course of conduct.

3. There is considerable danger that before measures can be matured for making a public impression by the prosecution of offenders, the spirit of opposition may extend and break out in other quarters, and by its extension become much more difficult to be overcome. There is reason to hope that a proclamation will arrest it, and give time for more effectual measures.

4. It may even prevent the necessity of ulterior coercion. The character of the President will naturally induce a conclusion, that he means to treat the matter seriously. This idea will be impressive on the most refractory, it will restrain the timid and wavering, and it will encourage the well disposed. The appearance of the President in the business will awaken the attention of a great number of persons of the last description to the evil tendency of the conduct reprehended, who have not yet viewed it with due seriousness. And from the co-operation of these circumstances good may reasonably be expected.

In either view, therefore, of the propriety of conduct, or the effects to be hoped for, the measure seems to be an advisable one. I beg leave to add, that, in my judgment, it is not only advisable, but

necessary. Besides the state of things in the western part of North Carolina, which is known to you, a letter has just been received from the supervisor of South Carolina, mentioning that a spirit of discontent and opposition had been revived in two of the counties of that State bordering on North Carolina, in which it had been apparently suppressed. This shows the necessity of some immediate step of a general aspect, while things are preparing, if unhappily it should become necessary, to act with decision in the western counties of Pennsylvania, where the government, for several obvious considerations, will be left in condition to do it. Decision successfully exerted in one place, will, it is presumed, be efficacious everywhere.

The Secretary of War and Attorney-General agree with me in opinion on the expediency of a proclamation. The draft of one now submitted has been framed in concert with the latter, except as to one or two particulars, which are noted in the margin of the rough draft in my handwriting, herewith also transmitted. In respect to these, the objections of that gentleman did not appear to me well founded, and would, I think, unnecessarily diminish the force of the instrument.

With the highest respect and truest attachment, I have the honor to be, etc.

HAMILTON TO WASHINGTON.

PHILADELPHIA, September 11, 1792.

SIR :—Herewith is an official letter, submitting the draft of a proclamation. I reserve some observations as most proper for a private letter.

In the case of a former proclamation, I observe it was under the seal of the United States, and countersigned by the Secretary of State. If the precedent was now to be formed, I should express a doubt whether it was such an instrument as ought to be under the seal of the United States; and I believe usage, as well in this country under the State governments as in Great Britain, would be found against it; but the practice having been begun, there are many reasons which in this instance recommend an adherence to it, and the form of the attestation is adapted to this idea.

But still, if the Secretary of State should be at so great a distance, or if an uncertainty of his being in the way should involve the probability of considerable delay, it will be well to consider if the precedent ought not to be departed from. In this case, the attestation will be required to be varied, so as to omit from the words "In testimony" to the words "my hand," inclusively, and to substitute the word "Given" to "Done"; and it may be advisable to direct the Attorney-General to countersign it.

Every day's delay will render the act less impressive, and defeat part of its object.

The propriety of issuing the proclamation depends of course upon a resolution to act in conformity to it, and put in force all the powers and means with which the Executive is possessed, as occasion shall require. My own mind is made up fully to this issue, and on this my suggestion of the measure is founded. Your letter by the last post, confirming former intimations, assures me that you view the matter in the same light.

The words in the proclamation, "dictated by weighty reasons of public exigency and policy," are not essential to the general scope of it. They amount to an *additional commitment* of the President on the question of the merits of the law, and will require to be well considered.

That the proclamation, both as to *manner* and *matter*, will be criticised, cannot be matter of surprise, if it should happen, to any one who is aware of the lengths to which a certain party is prepared to go. It ought to be anticipated as probable.

In a step so delicate and full of responsibility, I thought it my duty to make these observations; though I was sure they would of themselves occur.

It is satisfactory to know that a jury in Chester County convicted a person who was guilty of assaulting an officer of inspection. On being interrogated, they answered that they had found him guilty upon the count in the indictment which charged him with assaulting the officer in the execution of his duty; that the law was a constitutional act of government, and was not to be resisted by violence. I have directed Mr. Coxe to collect and publish the particulars. The symptom is a good one.

With the most faithful and affectionate attachment, etc.

HAMILTON TO WASHINGTON.

TREASURY DEPARTMENT, September 22, 1792.

SIR:—I have been duly honored with your letters of the 7th and 17th instant, and perceive with much pleasure a confirmation of the expectation which your

former communications had given, that your view of the measures proper to be pursued, respecting the proceedings therein referred to, would correspond with the impressions entertained here.

I flatter myself that the proclamation will answer a very valuable purpose; but every thing which the law and prudence will warrant, will be put in train as circumstances shall indicate, for such eventual measures as may be found necessary. I do not, however, despair that, with a proper countenance, the ordinary course of legal coercion will be found adequate.

The inclosed copy of a letter from the inspector of Kentucky to the supervisor of Virginia, of the 12th of July last, and the copy of a letter from one of his collectors to him of the 1st of June, contain interesting and, comparatively, not discouraging matter respecting the state of things in that survey.

The supervisor of Virginia, in a letter to the Commissioner of the Revenue, of the 10th instant, expresses himself thus: "I can truly say that the excise is now fairly on its legs in this district; it rests on the good-will of the greater part of the people, and our collectors are from no cause indisposed to the service, but the apprehension of too much business for too little compensation." A letter from Mr. Hawkins (Senator) to Mr. Coxe, announces favorable symptoms in the part of North Carolina which is in the vicinity of his residence.

On the whole, I see no cause of apprehension but that the law will finally go into full operation, with as much good-will of the people as usually attends revenue laws.

With the highest respect and truest attachment, etc.

P. S.—I have the pleasure to transmit herewith a letter from Mr. G. Morris, which was handed to me by Mr. R. Morris. The supervisor has been desired to forward to the Circuit Court at Yorktown such proof as he should be able to collect, addressed to the Attorney-General. It will, I perceive be satisfactory to that officer to receive your direction to proceed there. His presence is of importance, as well to give weight to what it may be proper to do, as to afford security that nothing which cannot be supported will be attempted. I submit the expediency of a line from you to him.

WASHINGTON TO GOVERNORS OF PENNSYLVANIA AND NORTH AND SOUTH CAROLINA.

(CIRCULAR.)

Draft by Hamilton.

UNITED STATES, September 29, 1792.

SIR :—Inclosed you will find the copy of a proclamation which I have thought proper to issue, in consequence of certain irregular and refractory proceedings, which have taken place in particular parts of some of the States, contravening the laws therein mentioned.

I feel an entire confidence that the weight and influence of the Executive of ———, will be cheerfully exerted in every proper way, to further the objects of this measure, and to promote on every occasion a due obedience to the constitutional laws of the Union. With respect, I am, sir, etc.

HAMILTON TO WASHINGTON.

November 27, 1792.

The Secretary of the Treasury presents his respects to the President. The execution of the process by the marshal himself is, for many reasons, so important, that it does not appear possible to dispense with it. If there should be any failure in the deputy, it would probably furnish a topic of censure and a source of much embarrassment. The impediment in point of health is to be regretted, but, it would seem, must be surmounted.

HAMILTON TO WASHINGTON.

TREASURY DEPARTMENT, June 4, 1794.

SIR:

Upon the receipt of the communication to you from the Governor of Pennsylvania, of the 18th of April last, I put that letter and the papers attending it into the hands of the Commissioner of Revenue to examine into the suggestions made, and report to me concerning them.

The result is contained in a letter from that officer, dated the 25th of April (which hurry of business put out of sight), and which is now communicated only for the information of the President, as the case does not seem to require any particular reply to the Governor, nor any act upon the subject; and the exhibition to him of the picture, which I believe is justly drawn, of the conduct of Mr. Addison and others, would perhaps only excite useless irritation.

The removal of either of the officers objected to,

after the persecution they have suffered, and the perseverance they have displayed, would be a hazardous step; and a suspicion is warranted by the conduct of the parties, that it may have been recommended with an insidious view. Experience, however, may better explain in a little time, whether any concession on that point will be expedient; in which case, some means of indemnifying the officer or officers who should be removed, would be demanded both by justice and policy.

With perfect respect, etc.

HAMILTON TO WASHINGTON.

June 14, 1794.

The Secretary of the Treasury presents his respects to the President. He had thought that the appointment of a supervisor for Pennsylvania might, without inconvenience, be deferred till the return of the President, and therefore deferred mentioning it; but on more particular reflection, as a new revenue year commences with the 1st of July, he believes it would be of use to accelerate the appointment.

The persons who have more particularly occurred to the inquiries of the Secretary (and his inquiries have been particular and extensive), are General Hand, now Inspector; Colonel Henry Miller, of York County; Charles Biddle, of this city; Colonel Francis Nichols; Mr. Clarkson, Mayor; and Major Lennox.

General Hand, from situation, would claim particular consideration; but the Secretary, with much

esteem for that gentleman on personal accounts, is obliged in duty to say, that he has been so materially defective in the execution of his present office, as to forbid an assurance that the superior one would be executed by him with due attention and exertion. And it is of vast consequence to the revenue and to the government, that no mistake should be committed in the present choice.

Of the persons named, Col. Miller, all circumstances considered, has the judgment of the Secretary in his favor. All agree that he is a man of good character, of friendly dispositions to the government and laws of the United States, of industry, exertion, *address* and *distinguished* firmness, of adequate though not superior ability, and most likely, of any man on whom equal dependence can be placed, to have weight in the most refractory scene of this State. He is also a man of decent property, unembarrassed. Among those who warmly recommend him is Mr. Ross, Senator of this State, who lives in one of the most western counties.

Mr. Biddle has many things in his favor. Perhaps he has more ability than any of the persons named, and no doubts are entertained of his firmness, activity, or attention. His connections and influence are principally among the malcontents; but most persons who have been consulted entertain an unfavorable impression of his political principles, and think there is not full assurance that he would not sacrifice the duties of his station and the interests of the government to party considerations. He was named by the *Democratic Society* Vice-President, which he has, it

seems, neither accepted nor publicly disavowed. Several attach an idea of cunning and duplicity to the character. *One* good judge of character thinks favorably of his principles, and that reliance may be placed; but the result of a comprehensive inquiry is, that there would be hazard in the appointment, and the case is believed to be one in which nothing ought to be hazarded.

Col. Nichols and Major Lennox stand nearly on a level—both men of adequate understanding, honorable characters, some property, undoubted firmness, and probable exertion; but on the last point there is greater assurance of Major Lennox. But neither of these gentlemen seem to have that extensive notoriety and popularity of character which is desirable to assist the progress of disagreeable laws. In this particular, Mr. Miller or Mr. Biddle has greatly the advantage.

Mr. Clarkson has several things in his favor; perhaps rather more ability than most of the other persons; but he wants *bodily* activity, which may be a point of consequence; and he is said to be much embarrassed in his circumstances.

The Secretary has committed these remarks to writing, not wishing to intrude on the President today, and desirous of placing the subject immediately before him. If he should conclude on the person before he leaves town, it is requested that he would leave a commission, signed but not *completed*, in order that it may be previously *ascertained* whether Mr. Miller will accept.

Among the persons who have been consulted is

the Attorney-General. He gave a preference to Mr. Miller. His knowledge of State characters is diffusive and accurate. Mr. Miller was lately a very promising candidate for the place of *Senator* in the Senate of the United States.

HAMILTON TO WASHINGTON.

TREASURY DEPARTMENT, August 2, 1794.

SIR:

In compliance with your requisitions, I have the honor to submit my opinion as to the course which it will be advisable for the President to pursue, in regard to the armed opposition recently given in the four western counties of Pennsylvania to the execution of the laws of the United States laying duties upon spirits distilled within the United States, and upon stills.

The case upon which an opinion is required, is summarily as follows. The four most western counties of Pennsylvania, since the commencement of those laws, a period of more than three years, have been in steady and violent opposition to them. By formal public meetings of influential individuals, whose resolutions and proceedings had for undisguised objects to render the laws odious, to discountenance a compliance with them, and to intimidate individuals from accepting and executing offices under them; by a general spirit of opposition (thus fomented) among the inhabitants, by repeated instances of armed parties going in disguise to the houses of the officers of the revenue, and inflicting upon them personal violence and outrage, by general combinations to

forbear a compliance with the requisitions of the laws, by examples of injury to the property and insult to the persons of individuals who have shown by their conduct a disposition to comply, and by an almost universal non-compliance with the laws, their execution within the counties in question has been completely frustrated.

Various alterations have been made in the laws by the Legislature, to obviate, as far as possible, the objections of the inhabitants of those counties.

The executive, on its part, has been far from deficient in forbearance, lenity, or a spirit of accommodation.

But neither the legislative nor the executive accommodations have had any effect in producing compliance with the laws.

The opposition has continued and matured, till it has at length broken out in acts which are presumed to amount to treason.

Armed collections of men, with the avowed design of opposing the execution of the laws, have attacked the house of the Inspector of the Revenue, burnt and destroyed his property, and shed the blood of persons engaged in its defence; have made prisoner of the marshal of the district, and did not release him till, for the safety of his life, he stipulated to execute no more processes within the disaffected counties; have compelled both him and the Inspector of the Revenue to fly the country by a circuitous route, to avoid personal injury, perhaps assassination; have proposed the assembling of a convention of delegates from those counties and the neighboring ones of Virginia, probably with a view to systematize measures of more

effectual opposition; have forcibly seized, opened, and spoliated a mail of the United States.

What in this state of things is proper to be done? The President has, with the advice of the heads of departments and the Attorney-General, caused to be submitted all the evidence of the foregoing facts to the consideration of an associate judge, under the act entitled, "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasion."

If the judge shall pronounce that the case described in the second section of that act exists, it will follow that a competent force of militia should be called forth and employed to suppress the insurrection, and support the civil authority in effectuating obedience to the laws and punishment of offenders.

It appears to me that the very existence of government demands this course, and that a duty of the highest nature urges the Chief Magistrate to pursue it. The Constitution and laws of the United States contemplate and provide for it.

What force of militia shall be called out, and from what State or States?

The force ought, if attainable, to be an imposing one, such, if practicable, as will deter from opposition, save the effusion of the blood of citizens, and serve the object to be accomplished.

The quantum must, of course, be regulated by the resistance to be expected. 'T is computed that the four opposing counties contain upwards of sixteen thousand males of sixteen years and more; that of these about seven thousand may be expected to be armed.

'T is possible that the union of the neighboring counties of Virginia may augment this force. 'T is not impossible that it may receive an accession from some adjacent counties of this State on this side of the Alleghany Mountains.

To be prepared for the worst, I am of opinion that twelve thousand militia ought to be ordered to assemble—9,000 foot and 3,000 horse. I should not propose so many horse, but for the probability that this description of militia will be more easily procured for the service.

From what State or States shall these come?

The law contemplates that the militia of a State in which an insurrection happens, if willing and sufficient, shall first be employed, but gives power to employ the militia of other States in the case either of refusal or insufficiency.

The Governor of Pennsylvania, in an official conference this day, gave it explicitly as his opinion to the President, that the militia of Pennsylvania alone would be found incompetent to the suppression of the insurrection.

This opinion of the Chief Magistrate of the State is presumed to be a sufficient foundation for calling in, in the first instance, the aid of the militia of the neighboring States.

I would submit, then, that Pennsylvania be required to furnish 6,000 men, of whom 1,000 to be horse; New Jersey 2,000, of whom 800 to be horse; Maryland 2,000, of whom 600 to be horse; Virginia 2,000, of whom 600 to be horse.

Or, perhaps, it may be as eligible to call upon each

State for such a number of troops, leaving to itself the proportion of horse and foot according to convenience. The militia called for to rendezvous at Carlisle, in Pennsylvania, and Cumberland Fort, in Virginia, on the 10th of September next. The law requires that previous to the using of force, a proclamation shall issue, commanding the insurgents to disperse and return peaceably to their respective abodes within a limited time. This step must, of course, be taken.

The application of the force to be called out and other ulterior measures must depend on circumstances as they shall arise.

With the most perfect respect, etc.

HAMILTON TO WASHINGTON.

Report on Opposition to Internal Duties.

TREASURY DEPARTMENT, August 5, 1794.

SIR:—The disagreeable crisis at which matters have lately arrived in some of the western counties of Pennsylvania, with regard to the law laying duties on spirits distilled within the United States, and on stills, seems to render proper a review of the circumstances which have attended those laws in that scene from their commencement to the present time, and of the conduct which has hitherto been observed on the part of the government, its motives and effect, in order to a better judgment of the measures necessary to be pursued in the existing emergency.

The opposition to those laws in the four most western counties of Pennsylvania (Alleghany, Wash-

ington, Fayette, and Westmoreland) commenced as early as they were known to have been passed. It has continued with different degrees of violence in different counties, and at different periods, but Washington has uniformly distinguished its resistance by a more excessive spirit than has appeared in the other counties, and seems to have been chiefly instrumental in kindling and keeping alive the flame.

The opposition first manifested itself in the milder shape of the circulation of opinions unfavorable to the law, and calculated by the influence of public disesteem to discourage the accepting or holding of offices under it, or the complying with it by those who might be so disposed, to which was added the show of a discontinuance of the business of distilling.

These expedients were shortly after succeeded by private associations to *forbear* compliance with the law. But it was not long before these more negative modes of opposition were perceived to be likely to prove ineffectual. And in proportion as this was the case, and as the means of introducing the laws into operation were put into execution, the disposition to resistance became more turbulent and more inclined to adopt and practise violent expedients. The officers now began to experience marks of contempt and insult. Threats against them became more frequent and loud; and after some time these threats were ripened into *acts* of ill treatment and outrage.

These acts of violence were preceded by certain meetings of malcontent persons, who entered into resolutions calculated at once to confirm, inflame, and systematize the spirit of opposition.

The first of these meetings was holden at a place called Red Stone Old Fort, on the 27th of July, 1791, where it was concerted that county committees should be convened in the four counties, at the respective seats of justice therein. On the 23d of August following one of these committees assembled in the county of Washington.

This meeting passed some intemperate resolutions, which were afterward printed in the *Pittsburgh Gazette*, containing a strong censure on the law, declaring that any person *who had accepted or might accept an office under Congress, in order to carry it into effect, should be considered as inimical to the interests of the country;* and recommending to the citizens of Washington County to treat every person who had accepted or might thereafter accept any such office, with contempt, and absolutely to refuse all kind of communication or intercourse with the officers, and to withhold from them all aid, support, or comfort.

Not content with this vindictive proscription of those who might esteem it their duty, in the capacity of officers, to aid in the execution of the constitutional laws of the land, the meeting proceeded to accumulate topics of crimination of the government, though foreign to each other; authorizing, by this zeal for censure, a suspicion that they were actuated, not merely by the dislike of a particular law, but by a disposition to render the government itself unpopular and odious.

This meeting, in further prosecution of their plan, deputed three of their members to meet delegates from the counties of Westmoreland, Fayette, and

Alleghany, on the first Tuesday of September following, for the purpose of expressing the sense of the people of those counties, in an address to the Legislature of the United States upon the subject of the excise law and *other grievances.*

Another meeting accordingly took place on the 7th of September, 1791, at Pittsburgh, in the county of Alleghany, at which there appeared persons in the character of delegates from the four western counties.

This meeting entered into resolutions more comprehensive in their objects, and not less inflammatory in their tendency than those which had before passed the meeting in Washington.

Their resolutions contained severe censures, not only on the law which was the immediate subject of objection, but upon what they termed the exorbitant salaries of officers, the unreasonable interest of the public debt, the want of discrimination between original holders and transferees, and the institution of a national bank. The same unfriendly temper towards the Government of the United States, which seemed to have led out of their way the meeting at Washington, appears to have produced a similar wandering in that at Pittsburgh.

A representation to Congress, and a remonstrance to the Legislature of Pennsylvania against the law more particularly complained of, were prepared by this meeting, published together with the other proceedings in the *Pittsburgh Gazette,* and afterwards presented to the respective bodies to whom they were addressed.

These meetings, composed of very influential indi-

viduals, and conducted without moderation or prudence, are justly chargeable with the excesses which have been from time to time committed; serving to give consistency to an opposition which has at length matured to a point that threatens the foundations of the government and of the Union, unless speedily and effectually subdued.

On the 6th of the same month of September, the opposition broke out in an act of violence upon the person and property of Robert Johnson, collector of the revenues for the counties of Alleghany and Washington.

A party of men, armed and disguised, waylaid him at a place on Pidgeon Creek, in Washington County, seized, tarred and feathered him, cut off his hair, and deprived him of his horse, obliging him to travel on foot a considerable distance in that mortifying and painful situation.

The case was brought before the District Court of Pennsylvania, out of which processes issued against John Robertson, John Hamilton, and Thomas McComb, three of the persons concerned in the outrage.

The serving of these processes was confided by the then marshal, Clement Biddle, to his deputy, Joseph Fox, who in the month of October went into Alleghany County for the purpose of serving them.

The appearances and circumstances which Mr. Fox observed himself, in the course of his journey, and learned afterwards, upon his arrival at Pittsburgh, had the effect of deterring him from the service of the processes, and unfortunately led him to adopt the inju-

dicious and fruitless expedient of sending them to the parties by a private messenger under cover.

The deputy's report to the marshal states a number of particulars evincing a considerable fermentation in the part of the country to which he was sent, and inducing a belief on his part, that he could not with safety have executed the processes. The marshal, transmitting this report to the district attorney, makes the following observations upon it: "I am sorry to add, that he (the deputy) found the people in general in the western part of the State, and particularly beyond the Alleghany Mountains, in such a ferment on account of the act of Congress for laying a duty on distilled spirits, and so much opposed to the execution of the said act, and from a variety of threats to himself personally, although he took the utmost precaution to conceal his errand, that he was not only convinced of the impossibility of serving the process, but that any attempt to effect it would have occasioned the most violent opposition from the greater part of the inhabitants; and he declares that if he had attempted it, he believes he should not have returned alive. I spared no expense nor pains to have the process of the court executed, and have not the least doubt that my deputy would have accomplished it, if it could have been done."

The reality of the danger to the deputy was countenanced by the opinion of General Neville, the inspector of the revenue, a man who before had given, and since has given, numerous proofs of a steady and firm temper. And what followed is a further confirmation of it. The person who had been

sent with the processes was seized, whipped, tarred and feathered, and after having his money and horse taken from him, was blindfolded and tied in the woods, in which condition he remained five hours.

Very serious reflections naturally occurred upon this occasion. It seemed highly probable, from the issue of the experiment which had been made, that the ordinary course of civil process would be ineffectual for enforcing the execution of the law in the scene in question, and that a perseverance in this course might lead to a serious concussion. The law itself was still in the infancy of its operation, and far from established in other important portions of the Union. Prejudices against it had been industriously disseminated, misrepresentations diffused, misconceptions fostered. The Legislature of the United States had not yet organized the means by which the Executive could come in aid of the Judiciary, when found incompetent to the execution of the laws. If neither of these impediments to a decisive exertion had existed, it was desirable, especially in a republican government, to avoid what is in such cases the ultimate resort, till all the milder means had been tried without success.

Under the united influence of these considerations, it appeared advisable to forbear urging coercive measures, until the laws had gone into more extensive operation, till further time for reflection and experience of its operation had served to correct false impressions and inspire greater moderation, and till the Legislature had had an opportunity, by a revision of the law, to remove, as far as possible, objections, and to reinforce the provisions for securing its execution.

Other incidents occurred from time to time, which are further proofs of the very improper temper that prevailed among the inhabitants of the refractory counties.

Mr. Johnson was not the only officer who about the same period experienced outrage. Mr. Wells, collector of the revenue for Westmoreland and Fayette, was also ill-treated at Greensburgh and Union Town; nor were the outrages perpetrated confined to the officers; they extended to private citizens who only dared to show their respect for the laws of their country.

Some time in October, 1791, an unhappy man of the name of Wilson, a stranger in the county, and manifestly disordered in his intellects, imagining himself to be a collector of the revenue, or invested with some trust in relation to it, was so unlucky as to make inquiries concerning distillers who had entered their stills, giving out that he was to travel through the United States, to ascertain and report to Congress the number of stills, etc. This man was pursued by a party in disguise, taken out of his bed, carried about five miles back to a smith's shop, stripped of his clothes, which were afterwards burnt, and, after having been himself inhumanly burnt in several places with a heated iron, was tarred and feathered, and about daylight dismissed—naked, wounded, and otherwise in a very suffering condition. These particulars are communicated in a letter from the inspector of the revenue, of the 17th of November, who declares that he had then himself seen the unfortunate maniac, the abuse of whom, as he expresses it, exceeded description, and

was sufficient to make human nature shudder. The affair is the more extraordinary, as persons of weight and consideration in that county are understood to have been actors in it, and as the symptoms of insanity were, during the whole time of inflicting the punishment, apparent—the unhappy sufferer displaying the heroic fortitude of a man who conceived himself to be a martyr to the discharge of some important duty.

Not long after, a person of the name of Roseberry underwent the humiliating punishment of tarring and feathering, with some aggravations, for having in conversation hazarded the very natural and just but unpalatable remark, that the inhabitants of that county could not reasonably expect protection from a government whose laws they so strenuously opposed.

The audacity of the perpetrators of those excesses was so great, that an armed banditti ventured to seize and carry off two persons who were witnesses against the rioters in the case of Wilson, in order to prevent their giving testimony of the riot to a court then sitting, or about to sit.

Designs of personal violence against the Inspector of the Revenue himself, to force him to a resignation, were repeatedly attempted to be put in execution by armed parties, but by different circumstances were frustrated.

In the session of Congress which commenced in October, 1791, the law laying a duty on distilled spirits and stills came under the revision of Congress, as had been anticipated. By an act passed May 8, 1792, during that session, material alterations were made in it. Among these the duty was reduced to a rate so mod-

erate as to have silenced complaint on that head; and a new and very favorable alternative was given to the distiller, that of paying a monthly instead of a yearly rate, according to the capacity of his still, with liberty to take a license for the precise term which he should intend to work it, and to renew that license for a further term or terms. This amending act, in its progress through the Legislature, engaged the particular attention of members who themselves were interested in distilleries, and of others who represented parts of the county in which the business of distilling was extensively carried on.

Objections were well considered, and great pains taken to obviate all such as had the semblance of reasonableness.

The effect has in a great measure corresponded with the views of the Legislature. Opposition has subsided in several districts where it before prevailed; and it was natural to entertain, and not easy to abandon, a hope that the same thing would by degrees have taken place in the four western counties of this State. But, notwithstanding some flattering appearances at particular junctures, and infinite pains by various expedients to produce the desirable issue, the hope entertained has never been realized, and is now at an end, as far as the ordinary means of executing laws are concerned.

The first law had left the number and positions of the offices of inspection, which were to be established in each district for receiving entries of stills, to the discretion of the supervisor. The second, to secure a due accommodation to distillers, provides peremptorily that there shall be one in each county.

The idea was immediately embraced, that it was a very important point in the scheme of opposition to the law, to prevent the establishment of offices in the respective counties. For this purpose the intimidation of well-disposed inhabitants was added to the plan of molesting and obstructing the officers by force or otherwise, as might be necessary. So effectually was the first point carried (the certain destruction of property and the peril of life being involved), that it became almost impracticable to obtain suitable places for offices in some of the counties, and when obtained, it was found a matter of necessity, in almost every instance, to abandon them.

After much effort, the Inspector of the Revenue succeeded in procuring the house of William Faulkner, a captain in the army, for an office of inspection in the county of Washington. This took place in August, 1792. The office was attended by the inspector of the revenue in person, till prevented by the following incidents.

Captain Faulkner, being in pursuit of some deserters from the troops, was encountered by a number of people in the same neighborhood where Mr. Johnson had been ill-treated the preceding year, who reproached him with letting his house for an office of inspection, drew a knife upon him, threatened to scalp him, tar and feather him, and reduce his house and property to ashes, if he did not solemnly promise to prevent the further use of his house for an office. Capt. Faulkner was induced to make the promise exacted, and, in consequence of the circumstance, wrote a letter to the inspector, dated the 20th of August, countermanding

the permission for using his house, and the day following gave a public notice in the *Pittsburgh Gazette* that the office of inspection should be no longer kept there.

At the same time another engine of opposition was in operation. Agreeable to a previous notification, there met at Pittsburgh, on the 21st of August, a number of persons styling themselves "A Meeting of Sundry Inhabitants of the Western Counties of Pennsylvania."

This meeting entered into resolutions not less exceptionable than those of its predecessors. The preamble suggested that a tax on *spirituous liquors* is unjust in itself, and oppressive upon the poor; that *internal taxes upon consumption* must, in the end, destroy the liberties of every country in which they are introduced; that the law in question, from certain local circumstances which are specified, would bring immediate distress and ruin upon the western country; and concludes with the sentiment, that they think it their duty to persist in remonstrances to Congress, and in every other LEGAL measure that may obstruct the operation of the LAW.

The resolutions then proceed, first, to appoint a committee to prepare and cause to be presented to Congress an address, stating objections to the law, and praying for its repeal; secondly, to appoint committees of correspondence for Washington, Fayette, and Alleghany, charged to correspond together, and with such committee as should be appointed for the same purpose in the county of Westmoreland, or with any committees of a similar nature that might be

appointed in other parts of the United States, and also, if found necessary, to call together either general meetings of the people, in their respective counties, or conferences of the several committees; and lastly, to declare that they will, in future, consider those who hold offices for the collection of the duty, as unworthy of their friendship, that they will have *no intercourse nor dealings with them*, will *withdraw from them every assistance, withhold all the comforts of life which depend upon those duties that as men and fellow-citizens we owe to each other, and will upon all occasions treat them with contempt, earnestly* RECOMMENDING IT TO THE PEOPLE AT LARGE TO FOLLOW THE SAME LINE OF CONDUCT TOWARDS THEM.

The idea of pursuing *legal* measures to *obstruct* the *operation* of a *law*, needs little comment. Legal measures may be pursued to procure the repeal of a law, but to *obstruct its operation* presents a contradiction in terms. The *operation*, or, what is the same thing, the *execution* of a law, cannot be obstructed after it has been constitutionally enacted, without illegality and crime. The expression quoted is one of those phrases which can only be used to conceal a disorderly and culpable intention under forms that may escape the hold of the law.

Neither was it difficult to perceive that the anathema pronounced against the officers of the revenue placed them in a state of virtual outlawry, and operated as a signal to all those who were bold enough to encounter the guilt and the danger to violate both their lives and their properties.

The foregoing proceedings, as soon as known, were

reported by the Secretary of the Treasury to the President. The President, on the 15th of September, 1792, issued a proclamation, "earnestly admonishing and exhorting all persons whom it might concern to refrain and desist from all unlawful combinations and proceedings whatsoever, having for object, or tending, to obstruct the operation of the laws aforesaid, inasmuch as all lawful ways and means would be put in execution for bringing to justice the infractors thereof, and securing obedience thereto; and moreover, charging and requiring all courts, magistrates, and officers whom it might concern, according to the duties of their several offices, to exert the powers in them respectively vested by law, for the purposes aforesaid; thereby also enjoining and requiring all persons whomsoever, as they tendered the welfare of their country, the just and due authority of government, and the preservation of the public peace, to be aiding and assisting therein according to law"; and likewise directed that prosecutions might be instituted against the offenders in the cases in which the laws would support and the requisite evidence could be obtained.

Pursuant to these instructions, the Attorney-General, in co-operation with the attorney of the district, attended a circuit court which was holden at Yorktown, in October, 1792, for the purpose of bringing forward prosecutions in the proper cases.

Collateral measures were taken to procure for this purpose the necessary evidence.

The supervisor of the revenue was sent into the opposing survey, to ascertain the real state of that survey, to obtain evidence of the persons who were

concerned in the riot in Faulkner's case, and of those who composed the meeting at Pittsburgh, to uphold the confidence and encourage the perseverance of the officers acting under the law, and to induce, if possible, the inhabitants of that part of the survey which appeared least disinclined, to come voluntarily into the law by arguments addressed to their sense of duty, and exhibiting the eventual dangers and mischiefs of resistance.

The mission of the supervisor had no other fruit than that of obtaining evidence of the persons who composed the meeting at Pittsburgh, and of two who were understood to be concerned in the riot; and a confirmation of the enmity which certain active and designing leaders had industriously infused into a large proportion of the inhabitants, not against the particular laws in question only, but of a more ancient date, against the Government of the United States itself.

The then Attorney-General being of opinion that it was at best a doubtful point whether the proceedings of the meeting at Pittsburgh contained *indictable* matter, no prosecution was attempted against those who composed it, though, if the ground for proceeding against them had appeared to be firm, it is presumed that the truest policy would have dictated that course.

Indictments were preferred to the Circuit Court, and found against the two persons understood to have been concerned in the riot, and the usual measures were taken for carrying them into effect.

But it appearing afterwards from various representations, supported by satisfactory testimony, that there had been some mistake as to the persons accused,

justice and policy demanded that the prosecutions should be discontinued, which was accordingly done.

This issue of the business unavoidably defeated the attempt to establish examples of the punishment of persons who engaged in a violent resistance of the laws, and left the officers to struggle against the stream of resistance without the advantage of such examples.

The following plan, which was afterwards put in execution, was about this time digested, for carrying, if possible, the laws into effect without the necessity of recurring to force.

1. To prosecute delinquents in the cases in which it could be clearly done for non-compliance with the laws. 2. To intercept the markets for the surplus produce of the distilleries of the non-complying counties, by seizing the spirits on their way to those markets in places where it could be effected without opposition. 3. By purchases through agents, for the use of the army (instead of deriving the supply through contracts as formerly), confining them to spirits, in respect to which there had been a compliance with the laws.

The motives to this plan speak for themselves. It aimed, besides the influence of penalties on delinquents, at making it the general interest of the distillers to comply with the laws, by interrupting the market for a very considerable surplus, and by at the same time confining the benefit of the large demand for public service to those who did their duty to the public, and furnishing, through the means of payment in cash, that medium for paying the duties, the want of which was alleged to be a great difficulty in the way of compliance. But two circumstances conspired to counter-

act the success of the plan: one, the necessity, towards incurring the penalties of non-compliance, of there being an office of inspection in each county, which was prevented in some of the counties by means of the intimidation practised for that purpose; another, the non-extension of the law to the territory northwest of the Ohio, into which a large proportion of the surplus before mentioned was sent. A cure for these defects could only come from the Legislature. Accordingly, in the session which began in November, 1792, measures were taken for procuring a further revision of the laws. A bill containing amendments of those and other defects, was brought in; but it so happened, that this object, by reason of more urgent business, was deferred till towards the close of the session, and finally went off through the usual hurry of that period.

The continuance of the embarrassment incident to this state of things, naturally tended to diminish much of the efficacy of the plan which had been devised. Yet it was resolved, as far as legal provisions would bear out the officers, to pursue it with perseverance. There was ground to entertain hopes of its good effects; and it was certainly the most likely course which could have been adopted towards attaining the objects of the laws, by means short of force; evincing unequivocally the sincere disposition to avoid this painful resort, and the steady moderation which has characterized the measures of the government.

In pursuance of this plan, prosecutions were occasionally instituted in the mildest forms, seizures were made as opportunities occurred, and purchases on public account were carried on.

It may be incidentally remarked that these purchases were extended to other places; where, though the same disorders did not exist, it appeared advisable to facilitate the payment of the duties by this species of accommodation.

Nor was this plan, notwithstanding the deficiency of legal provision, which impeded its full execution, without corresponding effects. Symptoms from time to time appeared which authorized expectations, that with the aid, at another session, of the desired supplementary provisions, it was capable of accomplishing its end, if no extraordinary events occurred.

The opponents of the laws, not insensible of the tendency of that plan, nor of the defects in the laws which interfered with it, did not fail from time to time to pursue analogous modes of counteraction. The effort to frustrate the establishment of offices of inspection, in particular, was persisted in, and even increased. Means of intimidating officers and others, continued to be exerted.

In April, 1793, a party of armed men in disguise made an attack in the night upon the house of a collector of revenue who resided in Fayette County, but he happening to be from home, they contented themselves with breaking open his house, threatening terrifying, and abusing his family.

Warrants were issued for apprehending some of the rioters upon this occasion, by Isaac Mason and James Findlay, assistant judges of Fayette County, which were delivered to the sheriff of that county, who, it seems, refused to execute them, for which he has since been indicted.

This is at once an example of the disposition to support the laws of the Union, and of an opposite one, in the local officers of Pennsylvania, within the non-complying scene. But it is a truth too important not to be noticed, and too injurious not to be lamented, that the prevailing spirit of those officers has been either hostile or lukewarm to the execution of those laws; and that the weight of an *unfriendly official influence* has been one of the most serious obstacles with which they have had to struggle.

In June following, the Inspector of the Revenue was burnt in effigy in Alleghany County, at a place and on a day of some public election, with much display, in the presence of and without interruption from magistrates and other public officers.

On the night of the 22d of November, another party of men, some of them armed, and all in disguise, went to the house of the same collector of Fayette which had been visited in April, broke and entered it, and demanded a surrender of the officer's commission and official books. Upon his refusing to deliver them up, they presented pistols at him, and swore that if he did not comply they would instantly put him to death. At length a surrender of the commission and books was enforced. But not content with this, the rioters, before they departed, required of the officer that he should, within two weeks, publish his resignation, on pain of another such visit and a destruction of his house.

Notwithstanding these excesses, the laws appeared during the latter periods of this year to be rather gaining ground. Several principal distillers, who had formerly held out, complied, and others discovered a

disposition to comply, which was only restrained by the fear of violence.

But these favorable circumstances served to beget alarm among those who were determined, at all events, to prevent the quiet establishment of the laws. It soon appeared that they meditated, by fresh and greater excesses, to aim a still more effectual blow at them, to subdue the growing spirit of compliance, and to destroy entirely the organs of the laws, within that part of the country, by compelling all the officers to renounce their offices.

The last proceeding in the case of the collector of Fayette, was in this spirit.

In January, of the present year, further violences appear to have been perpetrated. William Richmond, who had given information against some of the rioters in the affair of WILSON, had his barn burnt, with all the grain and hay which it contained; and the same thing happened to Robert Shawhair, a distiller, who had been among the first to comply with the law, and who had always spoken favorably of it. But in neither of these instances (which happened in the county of Alleghany), though the presumptions were violent, was any positive proof obtained.

The Inspector of the Revenue, in a letter of the 27th of February, writes, that he had received information that persons living near the dividing line of Alleghany and Washington had thrown out threats of tarring and feathering one William Cochran, a complying distiller, and of burning his distillery; and that it had also been given out that, in three weeks, there would not be a house standing in Alleghany County, of any person

who had complied with the laws. In consequence of which, he had been induced to pay a visit to several leading individuals in that quarter, as well to ascertain the truth of the information, as to endeavor to avert the attempt to execute such threats.

It appeared afterwards, that on his return home he had been pursued by a collection of disorderly persons, threatening, as they went along, vengeance against him. On their way these men called at the house of James Kiddoe, who had recently complied with the laws, broke into his still-house, fired several balls under his still, and scattered fire over and about the house.

Letters from the Inspector, in March, announce an increased activity in promoting opposition to the laws; frequent meetings to cement and extend the combinations against it; and among other means for this purpose, a plan of collecting a force to seize him, compel him to resign his commission, and detain him prisoner probably as a hostage.

In May and June new violences were committed. James Kiddoe, the person above mentioned, and William Cochran, another complying distiller, met with repeated injury to their property. Kiddoe had parts of his grist-mill at different times carried away, and Cochran suffered more material injuries; his still was destroyed, his saw-mill was rendered useless by the taking away of the saw, and his grist-mill so injured as to require to be repaired at considerable expense.

At the last visit, a note in writing was left, requiring him to publish what he had suffered in the *Pittsburgh Gazette*, on pain of another visit, in which he is

threatened, in figurative but intelligible terms, with the destruction of his property by fire; thus adding to the profligacy of doing wanton injuries to a fellow-citizen, the tyranny of compelling him to be the publisher of his wrongs.

June being the month for receiving annual entries of stills, endeavors were used to open offices in Westmoreland and Washington, where it had been hitherto found impracticable. With much pains and difficulty places were secured for the purpose. That in Westmoreland was repeatedly attacked in the night by armed men, who frequently fired upon it, but according to a report which has been made to this department, it was defended with so much courage and perseverance by John Wells, an auxiliary officer, and Philip Regan, the owner of the house, as to have been maintained during the remainder of the month.

That in Washington, after repeated attempts, was suppressed; the first attempt was confined to pulling down the sign of the office, and threats of future destruction; the second effected the object in the following mode: About twelve persons, armed and painted black, in the night of the 6th of June, broke into the house of John Lynn, where the office was kept, and after having treacherously seduced him to come down stairs and put himself in their power, by a promise of safety to himself and his house, they seized and tied him, threatened to hang him, took him to a retired spot in a neighboring wood, and there, after cutting off his hair, tarring and feathering him, swore him never again to allow the use of his house for an office, never to disclose their names, and never again

to have any sort of agency in aid of the excise; having done which, they bound him naked to a tree, and left him in that situation till morning, when he succeeded in extricating himself. Not content with this, the malcontents some days after made him another visit, pulled down part of his house, and put him in a situation to be obliged to become an exile from his home, and to find an asylum elsewhere.

During this time several of the distillers, who had made entries and benefited by them, refused the payment of the duties, actuated, no doubt, by various motives.

Indications of a plan to proceed against the Inspector of the Revenue, in the manner which has been before mentioned, continued. In a letter from him of the 10th of July, he observed that the threatened visit had not been made, though he had still reason to expect it.

In the session of Congress which began in December, 1793, a bill for making the amendments in the laws, which had been for some time desired, was brought in, and on the 5th of June last became a law.

It is not to be doubted that the different stages of this business were regularly notified to the malcontents, and that a conviction of the tendency of the amendments contemplated to effectuate the execution of the law, had matured the resolution to bring matters to a violent crisis.

The increasing energy of the opposition rendered it indispensable to meet the evil with proportionable decision. The idea of giving time for the law to extend itself in scenes where the dissatisfaction with it was the effect not of an improper spirit, but of causes

which were of a nature to yield to reason, reflection, and experience (which had constantly weighed in the estimate of the measures proper to be pursued), had had its effect in an extensive degree. The experiment, too, had been long enough tried to ascertain, that where resistance continued, the root of the evil lay deep, and required measures of greater efficacy than had been pursued.

The laws had undergone repeated revisions of the legislative representatives of the Union, and had virtually received their repeated sanction, without even an attempt, as far as is now recollected or can be traced, to effect their repeal—affording an evidence of the general sense of the community in their favor. Complaints began to be loud from complying quarters, against the impropriety and injustice of suffering the laws to remain unexecuted in others.

Under the united influence of these considerations, there was no choice but to try the efficiency of the laws in prosecuting with vigor delinquents and offenders.

Processes issued against a number of non-complying distillers in the counties of Fayette and Alleghany, and indictments having been found at a circuit court, holden at Philadelphia in July last, against Robert Smilee and John McCulloch, two of the rioters in the attack which in November preceding had been made upon the house of a collector of the revenue in Fayette County, processes issued against them also, to bring them to trial, and, if guilty, to punishment.

The marshal of the district went in person to serve these processes. He executed the trust without interruption, though under many discouraging circumstances,

in Fayette County; but while he was in the execution of it in Alleghany County—being then accompanied by the Inspector of the Revenue, to wit—on the 15th of July last, he was beset on the road by a party of from thirty to forty armed men, who, after much previous irregularity of conduct, finally fired upon him, but, as it happened, without injury either to him or to the Inspector.

This attempt on the marshal was but the prelude of greater excesses.

About break of day, the 16th of July, in conformity with a plan which seems to have been for some time entertained, and which probably was only accelerated by the coming of the marshal into the survey, an attack by about one hundred persons, armed with guns and other weapons, was made upon the house of the Inspector, in the vicinity of Pittsburgh. The Inspector, though alone, vigorously defended himself against the assailants, and obliged them to retreat without accomplishing their purpose.

Apprehending that the business would not terminate here, he made application, by letter, to the judges, generals of militia, and sheriff of the county, for protection. A reply to his application from John Wilkins, junior, and John Gibson, magistrates and militia officers, informed him that the laws could not be executed so as to afford him the protection to which he was entitled, owing to the too general combination of the people in that part of Pennsylvania to oppose the revenue law; adding, that they would take every step in their power to bring the rioters to justice, and would be glad to receive information of the individuals concerned in the

attack upon his house, that prosecutions might be commenced against them; and expressing their sorrow that, should the POSSE COMITATUS of the county be ordered out in support of the civil authority, very few could be gotten that were not of the party of the rioters.

The day following, the insurgents reassembled with a considerable augmentation of numbers, amounting, as has been computed, to at least five hundred, andon the 17th of July renewed their attack upon the house of the Inspector, who, in the interval, had taken the precaution of calling to his aid a small detachment from the garrison of Fort Pitt, which, at the time of the attack, consisted of eleven men, who had been joined by Major Abraham Kirkpatrick, a friend and connection of the Inspector.

There being scarcely a prospect of effectual defence against so large a body as then appeared, and as the Inspector had every thing to apprehend for his person, if taken, it was judged advisable that he should withdraw from the house to a place of concealment—Major Kirkpatrick generously agreeing to remain with the eleven men, in the intention, if practicable, to make a capitulation in favor of the property; if not, to defend it as long as possible.

A parley took place, under cover of a flag which was sent by the insurgents to the house, to demand that the inspector should come forth, renounce his office, and stipulate never again to accept office under the same laws. To this it was replied, that the inspector had left the house upon their first approach, and that the place to which he had retired was un-

known. They then declared that they must have whatever related to his office. They were answered, that they might send persons, not exceeding six, to search the house and take away whatever papers they could find appertaining to the office. But, not satisfied with this, they insisted, unconditionally, that the armed men who were in the house for its defence should march out and ground their arms, which Major Kirkpatrick peremptorily refused, considering it, and representing it to them, as a proof of their design to destroy the property. This refusal put an end to the parley.

A brisk firing then ensued between the insurgents and those in the house, which, it is said, lasted for nearly an hour, till the assailants, having set fire to the neighboring and adjacent buildings, eight in number, the intenseness of the heat, and the danger of an immediate communication of the fire to the house, obliged Major Kirkpatrick and his small party to come out and surrender themselves. In the course of the firing, one of the insurgents was killed and several wounded, and three of the persons in the house were also wounded. The person killed is understood to have been the leader of the party, of the name of James McFarlane, then a major in the militia, formerly a lieutenant in the Pennsylvania line. The dwelling-house, after the surrender, shared the fate of the other buildings, the whole of which were consumed to the ground. The loss of property to the inspector, upon this occasion, is estimated (and, as it is believed, with great moderation) at not less than three thousand pounds.

The marshal, Colonel Presley Neville, and several others, were taken by the insurgents going to the

inspector's house. All, except the marshal and Colonel Neville, soon made their escape; but these were carried off some distance from the place where the affray had happened, and detained till one or two o'clock the next morning. In the course of their detention, the marshal in particular suffered very severe and humiliating treatment, and was frequently in imminent danger of his life. Several of the party repeatedly presented their pieces at him, with every appearance of a design to assassinate him, from which they were with difficulty restrained by the efforts of a few, more humane and more prudent.

Nor could he obtain safety or liberty, but upon the condition of a promise, guaranteed by Colonel Neville, that he would serve no other process on the west side of the Alleghany Mountain. The alternative being immediate death, extorted from the marshal a compliance with this condition, notwithstanding the just sense of official dignity and the firmness of character which were witnessed by his conduct throughout the trying scenes he had experienced.

The insurgents, on the 18th, sent a deputation of two of their number (one a justice of the peace) to Pittsburgh, to require of the marshal a surrender of the processes in his possession, intimating that his compliance would satisfy the people and *add to his safety;* and also to demand of General Neville, in peremptory terms, the resignation of his office; threatening, in case of refusal, to attack the place, and take him by force—demands which both these officers did not hesitate to reject, as alike incompatible with their honor and their duty.

As it was well ascertained that no protection was to be expected from the magistrates or inhabitants of Pittsburgh, it became necessary to the safety both of the inspector and the marshal, to quit that place; and, as it was known that all the usual routes to Philadelphia were beset by the insurgents, they concluded to descend the Ohio, and proceed by a circuitous route to the seat of government, which they began to put in execution on the night of the 19th of July.

Information has also been received of a meeting of a considerable number of persons at a place called Mingo Creek Meeting-house, in the county of Washington, to consult about the further measures which it might be advisable to pursue; that at this meeting a motion was made to approve and agree to support the proceedings which had taken place, until the excise law was repealed, and an act of oblivion passed; but that, instead of this, it had been agreed that the four western counties of Pennsylvania and the neighboring counties of Virginia should be invited to meet in a convention of delegates, on the 14th of the present month, at Parkinson's, on Mingo Creek, in the county of Washington, to take into consideration the situation of the western country, and concert such measures as should appear suited to the occasion.

It appears, moreover, that, on the 25th of July last, the mail of the United States, on the road from Pittsburgh to Philadelphia, was stopped by two armed men, who cut it open, and took out all the letters except those contained in one packet. These armed men, from all the circumstances which occurred, were manifestly acting on the part of the insurgents.

The declared object of the foregoing proceedings is to obstruct the execution and compel a repeal of the laws laying duties on spirits distilled within the United States, and upon stills. There is just cause to believe that this is connected with an indisposition, too general in that quarter, to share in the common burdens of the community, and with a wish, among some persons of influence, to embarrass the government. It is affirmed, by well-informed persons, to be a fact of notoriety, that the revenue laws of the State itself have always been either resisted or very defectively complied with in the same quarter.

With the most perfect respect, I have the honor to be, etc.

CABINET OPINION—HAMILTON AND KNOX TO WASHINGTON.

PHILADELPHIA, August 5, 1794.

SIR:

The draft of a proclamation and that of an instruction to the commissioners being both prepared, we take the liberty to suggest that we think a meeting to-morrow morning, at such hour as may be convenient to the President, may be advisable. The Secretary of State and Attorney-General being out of town, we cannot consult them, but we will engage the attendance of the Attorney-General, provisionally, by nine o'clock, and if the President concludes on the meeting at that hour, he can have the Secretary of State apprised of it.

We have the honor to be, etc.

A. HAMILTON.

H. KNOX.

HAMILTON TO WASHINGTON.

August 6, 1794.

The Secretary of the Treasury presents his respects to the President, and sends him the statement of facts promised. The date is proposed to be two or three days before the proclamation, when it was in fact begun. There is a blank to be filled with a quotation from a former proclamation, which is not immediately at hand; but the blank will be filled before it goes to the press. If the President thinks the publication proper, and will be pleased to return the inclosed, the original draft being too much obliterated for the purpose, it shall be immediately begun in Dunlap's paper.

PROCLAMATION.

August 7, 1794.

By the President of the United States of America.

A PROCLAMATION.

Whereas, combinations to defeat the execution of the laws laying duties upon spirits distilled within the United States, and upon stills, have, from the time of the commencement of those laws, existed in some of the western parts of Pennsylvania: and whereas, the said combinations, proceeding in a manner subversive equally of the just authority of government and of the rights of individuals, have hitherto effected their dangerous and criminal purpose, by the influence of certain irregular meetings, whose proceedings have tended to encourage and uphold the spirit of opposition; by misrepresentations of the laws, calculated to

render them odious; by endeavors to deter those who might be so disposed from accepting offices under them, through fear of public resentment, and of injury to person and property, and to compel those who had accepted such offices, by actual violence to surrender or forbear the execution of them; by circulating vindictive menaces against all those who should otherwise directly or indirectly aid in the execution of the said laws, or who, yielding to the dictates of conscience and to a sense of obligation, should themselves comply therewith, by actually injuring and destroying the property of persons who were understood to have so complied; by inflicting cruel and humiliating punishments upon private citizens, for no other cause than that of appearing to be the friends of the laws; by intercepting the public officers on the highways, abusing, assaulting, and otherwise ill-treating them; by going to their houses in the night, gaining admittance by force, taking away their papers, and committing other outrages; employing for these unwarrantable purposes the agency of armed banditti, disguised in such manner as for the most part to escape discovery: and whereas, the endeavors of the Legislature to obviate objections to the said laws, by lowering the duties, and by other alterations conducive to the convenience of those whom they immediately affect (though they have given satisfaction in other quarters), and the endeavors of the executive officers to conciliate a compliance with the laws, by explanations, by forbearance, and even by particular accommodations, founded on the suggestions of local considerations, have been disappointed of their effect by the machinations of persons, whose industry

to excite resistance has increased with every appearance of a disposition among the people to relax in their opposition and to acquiesce in the laws, insomuch that many persons in the said western parts of Pennsylvania have at length been hardy enough to perpetrate acts which I am advised amount to treason, being overt acts of levying war against the United States ; the said persons having, on the 16th and 17th of July last past, proceeded in arms (on the second day amounting to several hundreds) to the house of John Neville, inspector of the revenue for the fourth survey of the district of Pennsylvania, having repeatedly attacked the said house, with the persons therein, wounding some of them ; having seized David Lenox, marshal of the district of Pennsylvania, who previous thereto had been fired upon while in the execution of his duty by a party of armed men, detaining him for some time prisoner, till, for the preservation of his life, and the obtaining of his liberty, he found it necessary to enter into stipulations to forbear the execution of certain official duties touching processes issuing out of a court of the United States ; and having finally obliged the said inspector of the said revenue, and the said marshal, from considerations of personal safety, to fly from that part of the country, in order, by a circuitous route, to proceed to the seat of government ; avowing, as the motives of these outrageous proceedings, an intention to prevent, by force of arms, the execution of the said laws ; to oblige the said inspector of the revenue to renounce his said office ; to withstand, by open violence, the lawful authority of the Government of the United States ; and to compel thereby an alteration in the

measures of the Legislature, and a repeal of the laws aforesaid: and whereas, by a law of the United States, entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," it is enacted, "that, whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by that act, the same being notified by an associate justice or the district judge, it shall be lawful for the President of the United States to call forth the militia of such State to suppress such combinations, and to cause the laws to be duly executed; and if the militia of a State where such combinations may happen shall refuse, or be insufficient, to suppress the same, it shall be lawful for the President, if the Legislature of the United States shall not be in session, to call forth and employ such members of the militia of any other State or States most convenient thereto, as may be necessary; and the use of the militia, so to be called forth, may be continued, if necessary, until the expiration of thirty days after the commencement of the ensuing session; *provided always*, that whenever it may be necessary, in the judgment of the President, to use the military force hereby directed to be called forth, the President shall forthwith, and previous thereto, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time"; and whereas, James Wilson, an associate justice, on the 4th instant, by writing under his hand, did, from evidence which had been laid be-

fore him, notify to me that, "in the counties of Washington and Alleghany, in Pennsylvania, laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshal of that district": and whereas, it is in my judgment necessary, under the circumstances of the case, to take measures for calling forth the militia in order to suppress the combinations aforesaid, and to cause the laws to be duly executed, I have accordingly determined so to do, feeling the deepest regret for the occasion, but withal the most solemn conviction that the essential interests of the Union demand it, that the very existence of government and the fundamental principles of social order are materially involved in the issue, and that the patriotism and firmness of all good citizens are seriously called upon, as occasions may require, to aid in the effectual suppression of so fatal a spirit.

Wherefore, and in pursuance of the proviso above recited, I, George Washington, President of the United States, do hereby command all persons, being insurgents as aforesaid, and all others whom it may concern, on or before the first day of September next, to disperse and retire peaceably to their respective abodes. And I do, moreover, warn all persons whomsoever, against aiding, abetting, or comforting the perpetrators of the aforesaid treasonable acts; and do require all officers and other citizens, according to their respective duties, and the laws of the land, to exert their utmost endeavors to prevent and suppress such dangerous proceedings.

In testimony whereof, I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand.

Done at the city of Philadelphia, the seventh day of August, one thousand seven hundred and ninety four, and of
[L. S.] the independence of the United States of America, the nineteenth.

GEO. WASHINGTON.

By the President,
EDMUND RANDOLPH.

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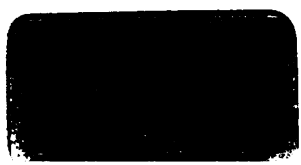
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